

THE
Game-Law,

PART. II.

BEING AN
EXPLANATION
OF THE
Acts of Parliament,
RECITED

In the *First PART*, for Preservation
of the Game of this Kingdom.

And Containing a Summary of the
LAWS relating to *Forests, Chases, Parks,*
and *Warrens*, and a Collection of all the ad-
judg'd Cases and Resolutions out of the se-
veral Books of *Reports* relating to the Game;
with the Arguments and Pleadings thereon,
shewing how the Statutes have been alter'd
or supplied: Likewise Actions on the Case,
with Declarations and Pleadings on such
Actions and Precedents of *Presentments,*
Grants, Licences, Leases of Warrens, Indict-
ments, Informations; &c.

In the *SAVOR*: Printed by *J. Nutt*, Assignee
of *Edw. Sayer Esq;* for *S. Butler* at *Bernard's-*
Inn Gate in *Holborn*, and *A. Collins* at the
Black-Boy in *Fleet-street.* 1712.



I

I

T
th
pe

For
for

T H E

P R E F A C E.

IT is observable in our ancient History, that there were Three Paramount Idols which the ancient *Britains* worshipped;

Apollo, called *Belindus*.

Adraсте, the Goddess of Victory. And,

Diana the Goddess of the Game.

For that *Britain* was heretofore wholly, as it were, a Forest,

A 2

The Preface.

rest, and Hunting then was not so much a Recreation as a Trade. But in Process of Time, the Princes and Nobles set their *Villani* and Dependants to fell down the Trees, and grub up the Woods ; but they preserved Compass sufficient in several Places to be separated with Boundaries, Limits, or Inclosures for their own Royal and Noble Game. Hence came Forests, Chases, Parks, and Free-Warrens. Nay, so careful were they of their Prerogatives and Privileges in this Matter, that it was *quasi* a Sacrilege to infringe them ; and in some Cases, destroying the Game was adjudge Felony, as hunting with Vizards and painted Faces : And
even

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even of late Times, by the Stat.
31 H. 8. c. 12. & 32 H. 8. c. 11.
taking Hawks Eggs out of the
King's Grounds, and the ta-
king up the King's Hawks, and
not restoring them in Time, was
Felony. And the great Regard
they had for the Game, appears
by the several Sorts of Tenures
per Grand Serjanty, and *Petit
Serjanty*, which I have in some
Places briefly touch'd upon.
And though these Statutes seem
antiquated or repealed; yet in
succeeding Ages, our Ancestors
were prudently cautious and
severe in preventing Encroach-
ments on their Recreations by
unqualified Interlopers, as ap-
pears by our late Acts of
Parliament, by the Penalties a-

The Preface.

gainst Offenders, which I need not here recite : For indeed, such Royal, Genteel, and Manly Pastimes, ought not to be disturbed or defeated by every Cobler, &c. who knows no Difference between fair Coarsing, and downright Stealing or Murdering.

This Treatise is designed as Supplemental to the First Part of the *Game-Law* : And as that doth little more than make a brief Recital of all the Acts in Force concerning the Game ; so this is an Improvement thereof by several Cases adjudg'd, with Reference to the Sections and Titles in the First Part, and by several Precedents relating
to

The Preface.

to the same: A Thing hitherto not so entirely done.

I have gone thro' the Three Elements, Air, Water, and Earth, and considered their respective Inhabitants, and the peculiar Sports and Entertainments conversant therein. As for the other Element, I do believe our Ancestors were not so furious for their Game, as to fetch it out of the Fire; neither do I any where find any Law or Constitution against hunting of Salamanders.

I have cited but little out Mr. *Manwood's Forest-Law*, (a Treatise very correct as any Book of that Kind extant;) but

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I have observed some Matters relating to that Law which have been adjudged since his Time, and are not (as I can find) contained in any other Treatise of this Nature.

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THE

THE
Game-Law,

PART II.

Of FORESTS.

SECT. I.

The Nature and Original.

IN Law it signifies a great Quantity of Ground inclosed, known in its Bounds for Wild Beasts of Chace by Prescription, or the King's Grant, 1 *Inst.* 233.

Ockam defines it, *Foresta est tuta ferarum mansio non quarumlibet sed silvestrium non in quibzlibet locis sed certis & ad hoc idoneis.*

B

The

*Forest over
other Mens
Lands
good by
Prescrip-
tion, and
why.*

The ancient Saxons called a Forest a *Buckhold*: All the Lands of a Subject are originally derived from the Crown; and therefore when the ancient Kings had most in their own Hands, or at least great Deserts, Wastes, and Woody Grounds, they might make what Forests they pleased. And therefore a Forest may be by Prescription, and have a lawful Commencement good in Law, over other Mens Grounds; but the King in his own Ground may make a Forest at this Day, but cannot erect a Forest or Chase over other Mens Grounds without their Consents; and such Agreement between them must be confirmed by Act of Parliament, as it was in the Time of King Henry the Elighth in *Hampton Court Forest*.

Incidents to a Forest.

*Incidents
to a Forest.*

There are divers Incidents to a Forest which a Subject cannot have. There must be a Justice of the Forest, one of great Dignity: There ought to be Verderors, who are Judges also. Also there are Three Courts incident to a Forest:

I. The

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3

1. The Court of Attachments;
2. The *Swainmote* Court.
3. The Justice-Seat.

Courts.

But by the Stat. 27 H. 8. c. 7. there are other Incidents to a Forest. *Popham* 150. *The King against Briggs*.

Vide hic postea.

Whether and how a Subject may have a Forest.

The King being seised of a Forest, did grant to another the Forest in Fee; the Grantee shall have no Forest, because he hath no Power to make Justices and Officers of the Forest to hold Courts: But yet though it cannot take Effect *vi termini*, as aforesaid, yet together with the Game, the same shall pass as a free Chase for the Salvages, for every Forest is a free Chase, & *Quiddam amplius*. *Vide* the Difference between a Forest and a Chase *infra*, 4 *Inst.* 314.

But if the King do grant a Forest to a Subject, and granteth farther, that upon Request made in Chancery, he and his Heirs shall have Justices of the Forest, then the Subject has a Forest in Law; as the Duke of

Lancaster had the Forest of *Pickering* and *Lancaster*, and the Abbot of *Whitby* had the Forest of *Whitby* in the County of *York*. *Ibid*.

No Subject
can properly
have a
Forest,
and why
not.

But no Subject can have a Forreſt properly ; and the Reason is, becauſe a Juſtice-Seat is incident to a Forest, and none can make a Juſtice in *Eyre* but the King. 2 *Bulſt.* 295.

It is a Reſolution in the Caſe of *Leiceſter* Forest, that a Forest may well be in the Hands of a Subject, and ſhall be uſed as a Forest, if the King grants Authority by expreſs Words for the Adminiſtration of Juſtice there, and for his Juſtices to come there ; otherwiſe, without ſuch Liberties it is but a Chaſe in the Hands of a Subject. *Cr. Fac.* 155.

*Beaſts of the Forest, and Seasons of
the Year.*

The Hart in Summer, the Hind in Winter ; the Buck in Summer, the Doe in Winter ; the Hare, the Fox, and the Marton. *Capreolus*, the Roe, is no Beaſt of the Forest, but it is a Beaſt of Chaſe. 4 *Inſt.* 316.

The

The Proceeds of the Buck and Doe; the first Year a Fawn, the second Year a Pricket, the third Year a Sorel, the fourth Year a Sore, the fifth a Buck of the first Head.

The Proceeds of the Hart and Hind, the Male; the first Year a Calf, the second a Brocket, the Third a Spayad, the fourth a Staggar, the fifth a Stag, the sixth an *Hart*. *Ibid*.

The Seasons, by the Law of the Forest, for the Beasts of the Forest are, *viz.* the Hart and Buck begin at the Feast of St. *John Baptist*, and ends at *Holy-Rood-Day*; the Hind and Doe begin at *Holy-Rood-Day*, and continues till *Candlemas*; of the Hare begins at *Michaelmas*, and lasteth till *Candlemas*. *Ibid*. *Seasons.*

Of Woods and Trees in a Forest.

Neither the Court of the Exchequer, nor any of the King's Officers, can dispose of the King's Timber or Woods; but it ought to be by Commission for the King's best Profit. *How to be disposed of.*

Prescription to cut down Timber in one's own Woods in a Forest.

Or how it may be done without such Prescription.

Prescription to take and cut down Timber-trees within his own Woods in a Forest, without the View of the Forester, may be good; for the Statute 1 Ed. 3. c. 2. is but in Affirmance of the Common Law. And if a Man hath a Wood in a Forest, and hath no such Prescription, the Law doth allow him Means to fall it, so it be no Prejudice to the Game; and that is by Writ *Ad quod damnum*, upon Return whereof the King doth License him. 4 Inst.

Every Man, in his own Wood in a Forest, may take House-bote and Heybote by the View of the Forester.

Tythes.

In Trespas of Tythes in *Hatfield Chase*, of Hay mowed to feed Deer, Tythe shall not be paid; *per Windham*: But by *Glin* and *Finch* they are due of common Right, and shall be paid unless there be a Custom to the Contrary; and they are payable to the King if *Extra-Parochiale*. 2 Keb. 22. *Proger's Case*.

Of Commoner, and Common in a Forest.

Prescription for Common in a Forest at all Times in the Year is void, unless Fence-month be excepted, and that is Fifteen Days before St. *Swithin*, and Fifteen Days after; then the Does have Fawns. This was in Prescription for Common for great Cattle all Times in the Year in *Alice Forest* by the Tenants of *Farnham*, 3 *Keb.* 746. *Trig* and *Turner*. See 3 *Levinz* in the same Case *contra*, that the Prescription is good without such Exception, fo. 98. And so *Brabrook* and *Carter's Case*, 3 *Levinz* 127. adjudg'd that the Prescription is good without such Exception.

Prescription for Commons without Exception of Fence-Month good.

One may prescribe for Common for Sheep in the Forest in the Fence-month, 3 *Lev.* 98. 1 *Rolls Rep.* 411. 3 *Bulstr.* 213.

But if Prescription for Common is by a *Que Estate* in a Tenement for Years of the Manor, it's void, 1 *Lut.* 81. That there may be Prescription for Common for Sheep in a Forest, is resolved, 2 *Crok.* 155. *Jones* 285. *Engl-field's Case*.

Per Que Estate in a Tenement for Years of the Manor void.

*If where
the Statutes
give Au-
thority to
enclose shall
exclude the
Commoner.*

Q. If the Statute 22 *Ed.* 4. c. 7. or the Statute 35 *H.* 8. c. 17. which give Authority to make Inclosure of Woods, the Commoner shall be excluded. Argued in 8 *Rep.* 135. Sir Francis Barrington's Case, and *Godb.* 167. *Chalk* and *Peters's Case*.

If Common be destroyed by *Deforestation*. *Vide Hard. Rep.* 438. as to that the true Explication of *Ordinatio forestæ*, made in 33 & 34 *Ed.* 1. *Palmer* 93, 94.

Surcharge of a Forest, is when a Commoner in a Forest puts in more Beasts than he ought.

Proof of a Forest.

Forests will appear by Matter of Record; as by the Eyres of the Justices of the Forests. *Swainmote* Officers of Forest; as Regardors, Agiftors, Verderors. But the Appellation of it by the Name of a Forest in Grants, is not any Proof that it is a Forest in Law, 12 *Rep.* 22.

*Of the Drifts of the Forest, Agitation
animalium in foresta.*

And that is, when all the Cattle, as well of Commoners as Strangers, are driven by the Officers of the Forest into some certain Pound, or Place inclosed, for Three Ends: 1. To see if those that ought to common, do common with such kind of Cattle as by Prescription or Grant they ought. 2. Whether they surcharge or not. 3. If the Cattle of any Stranger be there which ought not to common at all. *Vide Stat. 32 H. 8. c. 13. 4 Inst. 309.*

Bounds and Metes of the Forest Bounds of Forest. are most commonly Rivers, Highways, and in some Places by Churches, Trees, &c.

In what Cases the Forester may enter into another Man's Land to recuse the Salvages.

In Trespass Defendant pleads, that the Place where, &c. is adjoining to the King's Forest, and that one G. is Forester of the said Forest; and

shews how the Plaintiff, and all those whose Estates he hath in the Place adjoining to the Forest, have used to impale *contigue versus* the same Forest; and shews, how that in Default of Impalement Four Deer escape out of the Forest into the Place where the Defendant had supposed, &c. and the Defendant as Servant to the said G. and by his Command pursued them, and retook them into the Forest again. It's a good Plea, for it was the Default of the Plaintiff they came there: As a Man hath a Park, and salvage Beasts, and another break down the Pale, and by this the Salvages escape out of the Park into the Land of him that broke down the Pale, it's lawful for the Parker to enter, and retake the Beasts. Yet *Brian contra* for this last, for that no Property is in him that is Owner of the Park, and therefore shall have his Remedy by *Parco fracto*, *alit.* of Beasts Domestick, *Kell.* 31. 2 *Roll. Abr.* 565. *Conisby's Case.*

*Boundaries
to a Forest.*

In the Eye of the Law, the Marks, Metes and Boundaries of a Forest, go round about as it were a Brick-wall, directly in a right Line the one from the other, and are usual, and of such Things

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Things as cannot be removed or taken away, as Rivers, Highways, Hills, &c. or great Trees; and these Boundaries are known either by Matter of Record or Prescription.

An. 8 Ed. 3. it was adjudged, that no Person might fish in any River that is a Boundary of the Forest without Warrant, because it is Parcel of the Forest, and the King's, *4 Inst. 318.* Nor hunt or kill the King's Deer in an Highway, being an inclusive Boundary, though the State and Interest be in other Men.

And by the Stat. *17 Car. 1. c. 16.* the Limits and Bounds of all Forests shall be taken to extend then as they were commonly reputed, known or used in the 20th Year of King James, and not beyond in any wise. *Limits and Boundaries.*

Difference of the Forest Law from Common Law.

Note, Lex Forestæ is a private Law, and must be pleaded, *2 Leon. 209. 210.*

By the Law of the Forest, whoever receives any Malefactor within the Forest, either in hunting or killing, know

Receivers
of Male-
factors are
principal
Trespaffers.

knowing him to be such a Malefactor, or any Flesh of the King's Venison, knowing it, he is a principal Trespaffor as well as the Procurers, Plotters and Assistants. But at Common Law, such a Receiver is but an Accessary.

Felony in a
Forest en-
quirable at
Common
Law.

If any Felony be committed in a Forest, it shall be enquirable of before the Judges of the Common Law, and does not belong to the Chief Justice of the Forest. If Trespafs be done either in Vert or Venison in any Forest in the Hands of a Subject, in the Life of the Ancestor of the Lord of the Forest, it shall be punished in the Life of the Heir. But so it is not in

Actio
Personalis
non mori-
tur cum
Persona.

the Chases or Parks of a Subject, for by the Common Law *Actio Personalis moritur cum persona*, in such Case Difference between a Nuisance by the Common Law, and by the Forest Law

Nuisance.

is this: Nuisance at Common Law, is that which tendeth to the general Hurt and Annoyance of the King's Liege People, or of some particular Person: Nuisance by the Forest Law, is that which tendeth to the Hurt or Annoyance of the Vert or Venison. *Vide infra sub tit. Hawking, Hunting, &c.* Offences

Offences in Forests, and Punishments:

By the Statute 19 H.7. he that shall stalk with any Bush or Beast in any Park, Chase or Forest without Licence, shall forfeit every Time 10 l. to any Person who shall sue for the same by Action of Debt. *Vide 1 H.7. cap. 7.* *Stalkers.*

In every Trespass and Offence of the Forest in Vert or Venison, the Punishment is to be imprisoned, ransomed and bound to the good Abearing of the Forest, which must be executed by a judicial Sentence by the Lord Chief Justice in Eyre of the Forest. *Vid. infra sub tit. Hawking, Hunting, &c.* *Offences in Vert and Venison, how punished.*

Hue-and-Cry by the Forest Law is not to be made for Trespass in Vert, but Venison, 4 Inst. 294. and it cannot be pursued but only within the Bounds of the Forest. *Hue-and-Cry in a Forest.*

In Forests, no Certiorari till Conviction.

Removal of Presentments before the Foresters by *Certiorari* before it is affirmed at the *Swainmote* Court, which

which was for felling Wood by the Defendant, was denied until Conviction; for else the Courts of the Forest would be ousted of Jurisdiction, 2 Keb. 81. *The King against Maxoe.*

S E C T. II.

Of Purlieus.

ACTION on the Case by a Keeper of a Forest against him that disturbed him, by taking the Profits by Prescription due to his Office, and how to declare, *Moor*, fo. 706; n. 987.

*In what
Cases
Forester
may kill
another.*

Forester therein killing such as will not yield on Hue-and-Cry, or to resist with Force, is not punishable: So of Parker and Warrener, 21 Ed. 1. *Stat. de Malefactoribus in parcis.*

In the Case of Sir Richard Weston Attorney-General, they said, For Purlieu in Law he knew none as to hunt, for by Prescription it cannot be, because no Purlieu is by Prescription. And there is nothing in Statutes as to Hunting,

Part II. The Game-Law.

15

Hunting, therefore he held that Pur-lieu-men may only keep out the Deer, but cannot kill them, though they be in their Grounds, 1 Jones Rep. 278.

SECT. III.

A Chase,

IS a great Quantity of Ground lying open and privileged for wild Beasts and wild Fowl.

Difference between Forest and Chase.

A Forest and a Chase differ in Offices and Laws.

Every Forest is a Chase, & *quidam amplius*, but every Chase is not a Forest.

A Chase is *ad communem Legem*, and is not to be guided by the Forest Laws, and so not Parks, 4 Inst. 314. b.

A Man may have a free Chase as belonging to his Manor in his own Woods, as well as a Warren and a Park in his own Grounds; for the Chase,

The Nature of a Forest, Park, and Warren.

Chase, Warren, and Park, are collateral Inheritances, and not issuing out of the Soil as the Common doth : And therefore if a Man hath a Chase in other Mens Grounds, and after purchaseth the Grounds, the Chase remaineth, 4 *Inst.* 318.

Who may cut down Timber.

If a Man have Freehold in free Chases, he may cut his Timber and Wood growing upon it without View or Licence of any ; not so of a Forest : But if he cut so much that there is not sufficient for Covert, and to maintain the Game of the King, he shall be punished at the Suit of the King. And so if a common Person hath a Chase in another Soil, the Owner of the Soil cannot destroy all the Covert, but ought to leave sufficient Covert, and sufficient Browse-wood, as hath been accustomed, 12 *Rep.* 22. And it was resolved by all the Judges, That within such a Chase the Owner of the Soil by Prescription may have Common for his Sheep, and Warren for his Conies by Grant or Prescription ; but he cannot surcharge with more than has been used, nor make Coney-burrows in other Places than has been used, *Ibid.*

Common and Warren in a Chase.

Kel.

Kel. 14. 15. If a *Præcipe* lies of a Chase, Forest and a Chase are all one in Effect, *per Wood*. The Difference observe *supra*, but not as to the Royal Prerogative and Jurisdiction.

The Beasts of Park or Chase properly extend to the Buck, Doe, the Fox, the Marton, and Roe, but in a common and legal Sense to all the Beasts of the Forest, 1 *Inst.* 233.

If a free Chase be enclosed, it's a *Seisure*. good Cause of Seisure into the King's Hands.

If one have a Chase within the Fo- ^{Chase}rest, if he kill or hunt any Stag or red ^{within} Deer, or other proper Beasts of the ^{a Forest.} Forest, he is finable, 1 *Jones Rep.* 278.

Vid. infra tit. Hunting and Hawking, &c.

SECT.

S E C T. IV.

Courts of the Forest.

TH E R E are Three principal Courts :

1. The Court of *Attachments.*

This Court is the most inferior of them all, and cannot determine the Offence or Trespass of the Forest, if the Value thereof be above 4*d.* for all above that Value must be enrolled in the Verderors Roll, to have them in Readiness against the Time the Court of *Swainmote* is kept, there to have an orderly Trial according to the Laws of the Forest. Neither is a Presentment in this Court any Conviction against the Offender, because he may traverse the Offence until it hath passed the Court of *Swainmote*, to which all Trespasses presented at the Court of Attachments must necessarily proceed before the Offenders can be punished, or stand convicted as guilty in Law.

Here

Here the *Woodwards* must present all Offences within their Charge to the Chief Forester or Verderor; but they cannot make Attachment.

2. The Court of *Swainmote*.

When the Presentment of the Courts of Attachment and *Swainmote* have had their Proceedings, which are chiefly to present Agistors, Regardors, &c. yet cannot the Court of *Swainmote* determine the same, or assess Fines for any of the Offences so presented, or to give any Judgment thereupon, other than to pronounce them convicted. But the same Presentments and Convictions must be delivered into the Lord Chief Justice in *Eyre*, at the Court of Justice-Seat, on the first Day of the Court's sitting, when the same are called for.

The Plea of the Forest runs thus: *Presentatio per Forestarios & convictio per Veredarios.*

The *Swainmote* is a Court unto which all the Freeholders in the Forest do owe Suit and Service; and there ought to be a Steward at every *Swainmote*.

By

By the *Charta de Foresta*, c. 8. the Court of Attachment is to be kept every Forty Days throughout the Year, and the Court of *Swainmote* thrice in the Year: And these Two Courts are (as it were) but the Two Hands to deliver Matters to the Court of Justice-Seat, that from thence Judgment may be had.

The Verderors are the Chief Judges of the *Swainmote*, although the Chief Warden of the Forest, or his Deputy, doth usually sit there, but not as a judicial Officer, for then he could not make a Deputy.

At this Day all the Officers and Ministers of the Forest ought to appear at every *Swainmote*; not only the Verderors, Regardors, Agistors, Woodwards, and all other Persons within the Forest which are Freeholders, but also out of every Town and Village within the Forest of Men, and a Reeve on Default to be amerced and distress'd. By the Words [*Ministers of Forest*,] are intended the Stewards of the Court of *Swainmote*, who ought to be Men of Learning and Law.

3. The Court of *Justice-Seat*.

The Lord Chief Justice of the Forest is usually a Noble Peer of the Realm, and may keep his Court at any Place out of the Forest, 1 Cr. 405. He hath an absolute Authority to determine Offences committed in the King's Forests, either in Vert or Venison, who hath usual Assistants associated to him; and therefore when Justice Seats are to be holden, the King appoints Associates to the Chief Justice, who together with him may determine all Pleas of the Forest: And the Chief Justice, and these Associates, are named *Capitales Justiciarii Forestæ*.

The Chief Warden of the Forest is a great Officer, but yet he is no judicial Officer; however he is next to the Justice of the Forest to bail and discharge Offenders, also he hath a Deputy or Lieutenant.

The Constable of the Castle where a Forest is, is ever by the Law of the Forest Chief Warden of that Forest; as *Windsor-Castle, &c.*

A Verderor.

His Office is chiefly to be concerned in looking to the Vert; he is described to be a judicial Officer of the King's Forest, chosen by the King's Writ in the full County-Court of the Shire where the Forest is, and sworn before the Sheriff to maintain and keep the Assizes or Laws of the Forest, and also to view, receive and inrol the Attachments and Presentments of all Manner of Trespases of the Forest relating to Vert and Venison; and there are most commonly Four in every Forest.

His Office consists in Viewing, Enquiring, Receiving, Inrolling, Judging, Certifying.

A Regardor,

Is an Officer sworn to make the Regard of the Kings Forest, and to view and enquire of all Offences of the Forest, and of all Concealments of Offences or Defaults of Foresters, and other Officers of the Forest.

A Regardor may officiate till he be sworn by the Sheriff.

A Forester,

Is an Officer made by Letters Patents to hold either in Fee or for Life; his Office is to preserve the Vert and Venison, to attach Offenders and Trespassers, to present the Offenders and the Attachments he has made at the Forty-Day Court, and at the *Swaimore*.

An Agistor,

Is an Officer that doth attend upon the King's Woods and Lands in the Forest, to receive and take in the Beasts and Cattle of every Person, being an Inhabitant of the Forest, that may for their Money (and for the King's Profit) have Common of Herbage there for such Beasts as are commonable within the Forest: And this taking in of Cattle is called *Agistment of Cattle*. And there is an Agistment of Woods and Hedge-rows, which is called *Pawnage*, for the feeding of Hogs or Swine with the Mast of the Woods.

A Ranger.

Though he is not properly an Officer in the Forest, yet he is a considerable Officer of and to the Forest, his Charge being only concerning the Venison coming out of the Forest into the Purlieus.

S E C T. V.

Notes taken at a Justice-Seat for the Forest of Windsor, holden Sept. 24. 1632.

Earl of Holland Justice in Eyre; Lord Chief Justice of the King's Bench, and Baron Denham, Assistants. Mr. Noy Attorney-General attended for the King as his Council.

EVERY Forester, when he is first called, ought upon his Knees to deliver his Horn to the Chief Justice in Eyre: So every Woodward ought to present his Hatchet to my Lord.

Sir Charles Howard was called as Riding-Forester, Verderor, and Woodward.

Per Noy, If the King has a Wood of his own Demesne in a Forest, and make a Lease for Years of it, the Lessee ought to provide a Woodward; and if he doth not appear, the Wood shall be seised, and the Office. If a Woodward common Person have a Wood, and used to have a Woodward, if he doth not appear, the Wood is to be seised.

If the King grant a Park within his Forest, yet it is to be stor'd with Game, and the Woods are to be preserved, and the Pale to be kept so that there be no In-leaps.

No Allowance in any Court will put the King out of his Possession but only in Eyre, but an Allowance there bindeth the King; but for the King's-Bench Court, it hath no Jurisdiction in Forest Causes, and therefore an Allowance there of Liberties within the Forest, will not put the King out of Possession.

If any Man be presented for any Offence, as Waste, &c. and put in a Claim to be quit of Waste, &c. he shall be fined for the present, and when

the Claim is allowed, that dischargeth the Fine, Sir *William Jones* 267.

*Delivering
of the Rolls
in Parch-
ment.*

Sir *Richard Harison* and Sir *Charles Howard* being Verderors, for delivering up their Rolls in Paper, where they ought to be formally ingross'd in Parchment, were fined 20*l.* apiece. Sir *Richard Harison* and Sir *Charles Howard's* Case, Sir *W. Jones* 167.

Seisure.

A Seisure being made against my Lord *Lovelace's* Wood, for a Fine of 13*s.* 4*d.* the Seisure was stay'd, and his Claim for Priviledge to sell without Licence or View received.

Whitlock's Case.

*Felling
Wood.*

By the Law of the Forest, if it be for Firewood, or other necessary Boots, a Man may fell by the View of the Foresters or Verderors, but for Felling any Thing to sell, it cannot be but by Writ of *Ad quod damnum*.

Process.

The Process in *Eyre* is *De hora in horam*. If the King grant away Part of his Demesne Lands *cum omnibus Boscis ibid' crescen'* upon a valuable Consideration, the King's Intent was not to disafforest this, but only to pass the Interest in the Timber as well as in

in the Soil; but the Timber must remain as in a Forest, and therefore cannot be felled by Vertue of this Grant. *Felling Timber.*

It was agreed, That my Lord of *Holland* could grant no Licence to sell Wood as Constable of *Windsor-Castle*, but only as Justice in *Eyre*.

It was agreed in *Waltham* Forest, That the Justice in *Eyre* cannot grant Licence to sell any Timber, unless it be *sedente curia*, or else after a Writ of *Ad quod damnum*.

The Statute which gives Power to erect Cottages in the Waste for poor People, doth not extend to Wastes within Forests, 1 *Jones Rep.* 168, 169. *Cottages on Wastes.*

Sir Charles Howard's Case.

Upon a Presentment against him for felling Timber-Trees, he shewed the King's Warrant to him in general Words, *viz.* That whereas *Bygshot* Rails were in Decay, that he should cause as much Timber to be felled as is convenient for the Repair thereof. *Reparation of Pales.*
Per Lord Richardson, this is no legal Warrant, but the Decay ought first

to have been viewed, and an Estimate made of how much would be needful for the Repair, and then the Warrant to have gone out.

Taylor's Case.

Inclosure. Upon a Presentment against *John Taylor* for inclosing a common Lane, he was fined 10 s. and to lay out the Lane. And Mr. *Attorney* said, The Way for the King's Hunting ought to be as free as the Highways for Mens Travelling, 1 *Jones Rep.* 269.

1 *Inst.* 115. *Denied for Law.* It is said in 1 *Jones* 270. That tho' there is a late Opinion in *Coke* on *Litleton*, that a Prescription to fell and sell Wood without View is good, yet it's clear that that is not Law, as appears by 16 *Ed.* 2. *Rot.* 53. in the Earl of *Arundel's Case*. And my Lord *Richardson* denied that Difference taken by my Lord *Coke*, 1 *Inst.* 115. between negative Statutes declaratory of the Common Law, and negative Statutes introductory of a new Law: And he held against my Lord *Coke*, that in neither of the Cases a Prescription can be against a negative Statute, which Mr. *Attorney Noy* also affirmed: And

And therefore a Prescription could not be to fell and fell Wood without View of the Foresters.

No Warren can be claimed by Prescription without the Help of an Allowance in *Eyre*.

The Case of Loddon-Bridge.

It was presented, that *Loddon-Bridge* within the Manor of *S.* was in Decay, which the King used to repair as Lord of the said Manor, which, or most Part thereof, was convey'd to Mr. *Halsted*: Attorney moved, That Mr. *Halsted* might be indicted for it, and laid in the Indictment that he ought to repair it *ratione Tenuræ*; for the King doing it as Lord of the Manor, they that have the Manor must now look to the Repair.

Mr. *Halsted* shewed, That many others had purchased Part of the Lands which are liable, and desired he might have Contribution of them. It was answer'd, That the Court might force the Repair upon him alone, and he is to seek his Remedy at Law for Contribution of the others; and this Court is not to let the Bridge lie in Decay till

till it be disputed and determined between them, whether they ought to be Contributors or not?

Brown's Case.

Upon a Presentment against *Thomas Brown* for erecting a Brick-wall, and thereupon straitning the Highway, *Mr. Attorney Noy* said, That it could not be arrented, unless there was an Enquiry *per ministros Forestæ, si sit competens Passag'*; for if it be not, it is a Nuisance, in which the Subject is so far interested, that the King cannot dispense with it, *Jones Rep.* 277.

John Moor's Case.

He was presented for suffering Three Rood of Wood to be spoiled with Cattle. He came and shewed, that the Fence through which the Spoil came belonged to another Man to make, and so the Spoil was in his Default. But *Mr. Attorney* said, That it being within the Forest, he whose Wood is in Danger to be spoiled ought to request the other to make the Hedges; and if he refuse, then he must

Damage by another's not repairing Hedges.

must do it himself, and have an Action on the Case against the other that ought to have done it, 1 Jones 277.

Sir Richard Weston's Case.

All Men that have to do within a Forest, as well Spiritual as Temporal, are to appear; and he said, the Abbot of Westminster hath been amerced. *Appeal-
rance.*
Ibid.

The Office of a Riding-Forester is to lead the King in his Hunting. *Riding-
Forester.* *Ibid.*

Upon a Presentment against Sir Richard Harison for a Warren, he said, He made a Claim of it, and claimed it by Prescription. Mr. Attorney New said, No Warren could be claimed by Prescription within a Forrest without the Help of an Allowance in Eyre, Jones Rep. 280.

Dean and Chapter of Salisbury's Case.

Dean and Chapter of Salisbury being Proprietors of the Rectory of Winkfeild, claimed for them and their Tenants Common of Pasture for their Cattle, Commonable, Levant and Couchant

*Right of
Common-
ing.*

chant on the Rectory, &c. in the open Places of the Forest, and this by Prescription. *Per Mr. Attorney Noy*, For those that claim Common, and have Right, it must be enquired by the Ministers of the Forest, whether they use *Staff-boarding*, viz. to have one follow their Cattle, &c. for it is not allowable of common Right, for by that Means the Deer which otherwise would come and feed with the Cattle, are frighted so that they dare not; and the Keeper will drive them into the best Grounds, and so the Deer shall only have their Leavings. Therefore if any Man who hath Right of Common, and under Colour thereof use *Staff-boarding*, it is a Cause of seising their Common till they pay a Fine for the Abuse, and thereupon replevy their Common, *1 Jones 282.*

Tottershall's Case.

Prescription.

He within his Manor of *Finchamstead* claimed a Leet, Common of Pasture, &c. and strays all by Prescription, and did not say, *Tanquam ad manerium præd' pertinen'*, as it ought to

to be; for a Man cannot have Strays in Grofs by Prescription, because they lie in Grant. Then for the Leet: *Leet.* Mr. Attorney desired it might be enquired,

1. If he had used it?
2. If he had an able Steward to discharge the Office? For the Want of that is also a Cause of Seifure.
3. If he hath Officers; and those Things that are for the Execution of Justice, Constable, Pillory, &c.
4. If he punish Bakers more than Three Times, and doth not set them in the Pillory.

And it was Mr. Newty's Case in *Waltham Forest* for *Bowbridge*, who was fined 100 l. for his Neglect to repair it, and imprisoned till he paid the Fine, and yet there was an Order in the Exchequer for him to have Contribution; but Bridges are Things of Necessity, and must not expect the End of Suits. The Court accepted Mr. *Halsted*'s Bond sufficiently to repair it by a Day. Note, The Fine was ordered to go towards the Repair of the Bridge, *Jones Rep.* 273.

Blaggrave's Case.

Ferry.

It was presented, that *Ed. Blaggrave* had erected a Ferry where there was none before, for which he was fined 5 *l.* for by this Means Deer may be stolen, and carried over the Water, so as no Blood-hound can follow, *Jones Rep.* 273.

Street's Case.

Threatning Words.

He was indicted there, because before the Justice-Seat he having Speech with others about it, said, If you complain of me for cutting Wood within the Forest, I will be revenged of you, and make you smoak for it; and was fined 100 *l.* *Ibid.*

Nusan's Cases.

H. Nusan was fined, for concealing the Killing of a Stag by *H. Goff*, 5 *l.* *Ibid.* 275.

Wheat-

Wheatlye's Case.

R. Wheatlye was presented for carrying a Gun with Intent to kill the Deer, and was fined 50 s. ^{Carrying a Gun.}

The Inhabitants of Egham.

The Inhabitants of *Egham*, and all the Towns in *Surrey*, within the Forest, joined in a Claim to cut down their Coppices at Pleasure, and to have Cattle for all Cattle Commonable, and their Title was made by Prescription. Mr. Attorney Noy, That Prescription to cut down Wood was not good, for there be no Prescription since the Statute *de Charta de Foresta*, c. 3. which is, that all Wastes, &c. done after that Time without the King's Licence, shall be punishable. ^{Prescription.}

Mr. Attorney cited a Case to be resolved, 6 Jac. That in a Chase a Man may prescribe to cut down Wood, because they are not within the Statute *de Charta de Foresta*. ^{Chase.}

They ought not to have joined in one Claim: It is true, that Tenants in ancient Demesne may join in a Claim for Common, or the like, because the King

*Joint-Pre-
scription.*

King cannot claim for them; but other Men, if Copyholders, they must only join that are Tenants to one Lord, and the Lord must prescribe for him and his Tenants: But the Lord of a Manor cannot prescribe for any of his Freeholders, but every of them must put in several Claims. For the Reason why the Lord may prescribe for his Copyholders is, because the Freehold in Law of their Land is in the Lord; neither can Inhabitants prescribe by that Name for Common, or any other Profit appender, 6 Rep. 60.

*Burning
Heath.*

Per Attorney Noy. In King Henry the Second's Time the Inhabitants of this Part of the Forest in Surrey were fined an 100 Marks for burning of Heath, for it spoileth the Layer of the Deer, and disturbs them, Jones 276.

Mathew's Case.

*Arrenting
a Cottage.*

If the Justice in Eyre will grant Licence to erect a Cottage, or make an Inclosure, and arrent it *imperpetuum* at a certain Rent; yet if this be not done sitting the Court, it may be pulled down again: But if such a Licence
and

and Arrentation be *sedente curia*, it is good for ever.

Sir Charles Howard's Fourteenth Case.

Per Cur', His Claim of the Custody of all Houses, Barns, &c. within the Bailiwick, is void; for he doth not shew that the King was seised of them, and he could not grant the Custody of other Mens Houses. And a Grant from the King of the Custody of all his Houses is not good, unless the King take Notice of them particularly. And for his Claim of Office of Keeper or Bailiff of several Walks, *una cum vadis & feodis*, &c. because there is no Fee in certain claimed, that therefore he might be discharged of his Office, which was but a Burden to him; and those Words *Debit' & consuet' & tot' tant'*, &c. will not help it, there being no Averment what they were, so that nothing appeareth to the Court upon which to ground an Allowance: And therefore there is a great Difference between a Grant and a Plea, for a Grant is good with such general Words, because it is reducible to a Certainty; but when he comes

Averment.

Difference between a Grant and a Plea as to Claim of Fees.

comes to plead, then he must aver particularly what the Fees are.

Annuity
Pro concilio impenso & impendendo.

Further, his Patents run *Pro servitio facto & faciendo*, and therefore it ought to be averred that he was always ready to do Service. And it was Mr. *Ming's* Case of the *Inner-Temple*, who had an annual Fee granted *pro concilio impendendo*; and it was resolved in his Action for this, he ought to aver that he was always ready to give him Council.

Verderor.

Mr. *Attorney* desired, that for a general Reason his Offices of Keeper and Bailiff of several Walks, and of the Game there, and of Riding-Forrester, might be seised, because all these were subordinate to the Office of a Verderor; and therefore by that his other Offices were determined.

And *per Cur'*, All the other Places here claimed by Sir *Charles Howard* were inferior to his Place of Verderor, and so determined by Acceptance thereof, *Jones Rep.* 294.

Per Mr. Attorney. Tho' Men may cut their Woods for their necessary Boots by View of Foresters or Verderors, yet at the next Court of Attachment the Officers ought to present what

what was felled, and that it was by View, that so it may appear of Record.

Cary's Case.

Tho. Cary Esq; claimed S. Park, Fore extra Forestam & habere liberam Warrenam ibid' Licet sit infra metas Forestæ, and this by Letters Patents of King Charles.

Mr. Attorney desired it might be enquired by the Officers of the Forest :

1. Whether it be impaled ?
2. Whether there be any Salteries into it, so that the King's Deer may get in thither ?
3. Whether there be any Conies there ? And if there be, Whether the Park is so inclosed, that they cannot get out ? For then they will both eat upon the Forest, and spoil the Riding. All of these are Causes of Seisure till they do replevy their Liberties.

The Judges agree in *Hen's Case*, *Jones* 296. That if a Man do enclose where he may by Law, that he is bound to leave a good Way, and also to keep it in continual Repair at his own

Inclosure.

own Charge, and the Country ought not to be contributory thereto.

Sir Edmund Sawyer's Case.

Sir Edmund Sawyer, one of the Auditors of the Exchequer, being presented for some Offence, delivered in a *Superfedeas*, pretending the Priviledge of the Exchequer, and that he ought not to be impleaded elsewhere. *Attorney-General* desired he might plead his Priviledge, for all the Priviledges of the Exchequer are in a Book, called *The Red Book*; and the Order is, If the Officers of the Court be impleaded elsewhere, that a Baron of the Exchequer coming, and bringing that Book, and shewing the Orders, and also avowing the Person to be an Officer of the Exchequer, the Priviledge is allowed without any Plea, *Jones Rep.* 288.

Priviledges of Exchequer.

Tenants of the Manor of Bray.

They make Prescription to do Waste, or cut Wood, without View. But by *Noy*, none can make that Prescription since *Stat' de Foresta*, c. 4. It was argued

Prescription to cut Wood.

gued on the other Side, that the Prescription was good enough notwithstanding that Statute, by the *Consuetudines & Affisæ de Foresta*, and took the Difference in 1 *Inst.* 115. between a Negative Statute which is only declaratory of the Common Law, and a negative Statute which is only introductive of a new Law. Against the last, no Prescription is good; against the first, it is: And this is the Reason that a Man may prescribe to hold a Leet more than twice in the Year, although the Statute of *Magna Charta* *Inst.* 115. be negative. But the *Attorney General* Denied for disallowed that Difference, and cited *Law.* a Case out of 20 *H.* 6. that though the Statute of *Silva Cædua* be but in Observance of the old Law, *viz.* that no Tythes ought to be paid of Timber, &c. yet that Statute being only a Negative, a Prescription to have Timber is not good.

Mr. *Attorney* said, That no Liberty within a Forest which either went in Destruction of the Vert or Game was allowable by Prescription, unless they could shew an Allowance in a former *Eyre* of it, except only in case of Common, which is not good with-
out

out an Allowance, because that is an equitable Prescription, and upon the Matter of common Right, that since the Deer have fed on their Grounds, they also should have Common.

The Judges agree, That a Prescription *Extra Forestum* was not good without Allowance.

Claim to

the Office of
a Keeper.

If a Man claim the Office of a Keeper, &c. and claim no Fee for the Execution thereof, this is but a Burden, and therefore he is removable at Pleasure : As if a Man claim that he hath used to Tile my House ; if he claim no Recompence for it, I may discharge him when I will, *Jones 292.*

Sir Charles Howard's Case.

He claimed the Office of Keeper and Bailiff of *Bigshot-Walks*, and of *Easthamsted-Walk*, within the Forest of *Windsor*, and the Custody of all the Deer, Pheasants, &c. *nee non custodiam omnium domorum horreorum stabulorum & edificiorum quorumcumq; infra ballivat. præd', &c.* and made Title by Charter of King *James*, *una cum tot' tant', &c. vadis & feodis debis & consuet', &c. quot, &c. aliquis alius, &c.* He also claimed

claimed the Office of Riding-Forester of the whole Forest by Letters Patents from King James, wherein he had 3 d. ob. a Day granted for the Executing the said Office.

The Inhabitants of *Haley* claimed Common for all their Cattle, and do not say Levant and Couchant upon the Land in certain; and such a Common is not allowable at Common Law, for then a Man might buy as many Cattle as he would at a Fair, and turn them into the Forrest.

It is observed by a learned Man, That Providence is indulgent to us in England in this, that our Four principal Forests lie either on the Sea, or on some Navigable River.

New-Forest on the Sea.

Shirwood-Forest on the Trent.

Dean-Forest on the Severn.

Windsor-Forest on the Thames.

Placita Coron' apud cru' Lapid', Rot. 15.

Richard' de plessis tenet vigint' libratas terr' in Enfield, in Com' Midd' de Domino Rege, per Serjantiam essendi capitales Forestarius Dom' Regis in Forest' de Mendip Exemore & Selwood in Com' Somerset.

This

This *Crux Lapidia* stood near the *May-pole* in the *Strand*, where the *Judges Itinerant* in old Times used to sit.

Placita Coronæ apud Shirborn, 8 Ed. 1.
Dorset, Rot. 10.

Juliana ux' Johannis filii Alam' tenuis dimidiam bidam terræ in Proseaundell in Com' Dorset, in capite per Serjantiam custodiendi Canes Dom' Regis Lesos si qui fuerint, quotiescunq; Dom. Rex fugaverit in Foresta sua de Blackmore.

Note, *Canes Lesos* are *Leash-Hounds* or *Park-Hounds*, such as draw after and hurt Deer in a *Leash*.

Punishment of such as Hunt without Warrant.

If any Forester or Keeper shall find or take any Person hunting without lawful Colour or Warrant, he shall arrest his Body, and carry him to Prison, from whence he shall not be delivered without special Warrant from the King, or his Majesty's Justices in Eyre in the Forest. But see by 1 Ed. 3.

Stat.

Stat. 1. c. 8. they areailable if not taken in the Manner. And though the Words of the Statute be, *That if any shall take a wild Beast of the Forest*, yet if any Person be taken hunting in the Forest, he is to be punished by the Law as if he had taken and killed a Wild Beast. Therefore if a Forester or Keeper shall find any Person within the Forest with Bow and Arrows, or with Greyhounds, intending to offend there, he shall arrest and imprison him as if he had committed the Fact; but his Body shall not be arrested unless he be taken in the Manner, as with a Bow ready to shoot, or wounded a Deer, and draw a Dog to recover it; or when he hath slain a Deer, and is carrying it away; or is smear'd with Blood of any Deer.

Some other RESOLUTIONS out of Mr. Manwood's.

If a Man do make Charcole or Browse-wood within the Forest, it is finable.

The

*Browse-
wood for
the Deer.*

The Lord of a Forest may by his Officers enter into any Man's Wood which is growing within the Regard of the Forest, and cut down Browse-wood for the Deer in Winter.

*Common in
a Forest.*

A Claim made for Common of Pasture is good; but neither Sheep nor Swine are allowed to have Common within the Forest; nor may any Man common with Goats without special Warrant.

*Tythe of
Venison.*

There is no Tything of Venison by the Law, but in some Places by Usage.

The Prior of York claimed by Charter to have Tythe of all Venison, *Tam in Carne quam in Corio*, whereas he ought to have it *in Corio* only; for which he was fined, but enjoy'd it *in Carne*, 4 Inst. 297.

Thorns.

He that cuts down Bushes and Thorns, and carries them away in a Cart, the Cart and Horses shall be seised, and he shall be fined,

Nuts.

None may gather Nuts within the Forrest without Warrant.

*Hue-and-
Cry.*

If Hue-and-Cry be made by the Ministers of the Forest, and not pursued and followed with Effect, the Township that are Faulty shall be well
I
fined,

fined, 4 *Inst.* 292. They shall be amerced at the Justice-Seat.

The Lord *Dacres* and *Mansell*, and others in his Company, came unlawfully to hunt in a Forest, and being resisted, one of the Company, when the Lord *Dacres* was a great Way off, and not present, killed a Man, and it was adjudged Murder in him and all the rest; for in Trespass in a Forest all are Principals, *Kel. Rep.* 87. *Moor Rep.* 86. *Trespass in a Forest, all are Principals.*

He that steals Venison in the Forest, and carries it away upon Horseback, the Horse shall be forfeited, unless it be the Horse of a Stranger who is ignorant of the Fact. *Stealing Venison.*

An Abbot was fined for killing an Hart within a River, being a Boundary of a Forest. Also no Man may fish in a River that is a Boundary without Warrant. If the King do grant Liberty to make a Park, and it is not after used, the Non-use is a good Cause of Seizure. *Boundary.*

Hunting

Hunting of Deer. *Vide* Game-Law, Part I. p. 7.

Chasing, killing, or stealing of Deer.

Stat. 13 Car. 2. c. 10.

*Courſing,
killing,
hunting,
taking
Deer.*

*Penalty
20 l.*

*Proſecution
within Six
Months.*

BY this Statute, not only courſing and killing, but hunting or taking away Deer in any Ground where Deer are kept, the Forfeiture is 20 l. one Moiety to the Informer, the other to the Owner of the Deer. The Offence muſt be againſt the Conſent of the Owner, or of him that is intruſted to keep the Deer. The Proſecution muſt be within Six Months after the Offence; the Conviction muſt be before One Juſtice of the Peace by Confeſſion or Oath of One Witneſs; and the Penalty is to be levied by Warrant from that Juſtice before whom the Offender was convicted, by Diſtreſs, &c. and if that could not be taken, then he might be committed to the Houſe of Correction for Six Months,

Months, or the common Gaol for a Year, and not to be discharged till Security given for good Behaviour for One Year after his Enlargement.

Note, Those who are aiding and assisting incur the same Punishment. None punished by this Act shall incur the Penalty of any other Law for the same Offence.

Aiders and Assistants incur the same Penalty.

In the Case of the King against *Alfop* and *Bently*, Council pray'd Process in *B. R.* on Removal of Order of Conviction of the Defendants on the said Statute, which *per Cur'* ought not to be hence, but it is only proper to the Justices below; and being only a *Certiorari*. and no *Habeas Corpus*, the Court would not remand it, 3 *Keb.* 516. 27 *Car.* 2. *B. R.*

Removal of the Order of Conviction of the Defendant by Certiorari.

In the Case of the King against *Ryde*, 18 *Car.* 2. *R. B.* Indictment was for not executing a Warrant of a Justice of Peace in *Suffex*, made on Conviction of one *Stirt*, and other Hunters, at the Sessions; and it was moved to be quash'd, because no Place appears where the Warrant was made. Also it was *Pro injusta venatione*, which by *Stat.* 13 *Car.* 2. c. 10. is not sufficient without Killing, which the Court

Exceptions to an Indictment on that Statute.

D—

agreed if the Indictment be on the Statute. And also the Indictment doth not say, That the Warrant for Distress was made by the same Justice before whom the Conviction was: Also it doth not appear by the Statute who should levy the Distress; therefore the Constable is not bound to execute all that Justices of Peace enjoin, at least not on Pain of Indictment for Neglect, much less any other. Also the Statute is to levy by Distress, and the Warrant is to levy Distress, and the Indictment was quashed, 2 Keb. 74, 75.

Stat. 5 Eliz. c. 23.

*Treble Damages,
and the
Plaintiff
shall have
his Costs.*

In an Action upon the Statute 5 Eliz. c. 216. for hunting in his Park, the Statute gives treble Damages: It was the Opinion of the Justices, That notwithstanding the Statute gives treble Damages, that the Plaintiff shall have Costs also, 4 Leonard 36. Onyon's Case.

Trespass

Trespass for killing a Tame Doe.

Leonard' Hunter *de, &c. Attach' fuit ad resp' M. A. &c. quærunt' qd' præd' Leonard' &c. 10 Nov. 36 Car. 2. Vi & Armis quandam damam domitam & mansuet' ipso' M. præcii, &c. apud paroch' de R. &c. nuper invent' interfecit cepit & asportavit & alia enormia, &c.*

Actio non. Defendant pleads, he was possess'd of Twenty Acres, &c. for Term of Years; and so being possess'd, a vagrant Doe, *erratica vagrans & incogn' tempore quo & devenit in vigint' acras terre & præd' Leonard' non sciens præd. damam fore domitam & mansuetam eandem damam præd' tempore quo, &c. sic in viginti acris terre invent' & existen' interfecit, cepit & asportavit, prout ei bene Licuit, &c.*

The Plaintiff demurs; the Court inclined, That the Plaintiff ought to have averr'd in his Count, that the Defendant knew that the Doe was tame; for if he did not know it, they were inclined that he was excusable: But order to amend the Declaration, and the Defendant plead to it,
Not said knowing her to be tame.
 2 Lut. 1359, 1360. Atkinson vers. Hunter.
 D 2 In.

Indictment for hunting and taking
Deer.

Midd' ff. *Fur', &c. quod J. O. de H. in Com. præd. Yeoman, 27 die Junii, Anno Regni, &c. circa horam Duodecimam in nocte ejusdem Diei aggregatis sibi diversis aliis malefactoribus & pacis Dom' Reginae nunc perturbatoribus ignotis Vi & Armis, videlicet baculis ferro munitis pugionibus & cultellis & aliis Armis Clausum & Parcum cujusdam J. S. armig' apud B. in Com' præd' illicite fregerunt & intraverunt & damas ipsius J. S. adtunc & ibid' depascentes & cubantes in parco præd' cum duobus Canibus Leporariis, (Anglice Greyhounds) venatus est & cum rete, vocat. a Buck-stall, qd' præd' J. O. in parco præd' adtunc habuit & canibus præd' duas damas adtunc & ibid' cepit occid' & asportavit contra pacem, &c. ad grave damnum ipsius J. S. & contra formam Stat', &c.*

*A Warrant to levy the 30 l. for killing
or wounding a Deer.*

To the Constable, &c.

Suff. ff. Whereas *J. O.* of, &c. hath been duly convicted before me upon Oath, that he did unlawfully kill, wound and take away one Fallow-Deer in and from the Park of Sir *T. B. Bart.* on the 30th Day of *March* last past, contrary to the Statute in that Case made and provided, by reason whereof he hath forfeited the Sum of 30 l. These are therefore to require you, or some or one of you, forthwith to levy the said 30 l. so forfeited, by Distress and Sale of the Goods and Chattels of the said *J. O.* and that you pay and dispose one Third Part thereof to *R. H.* who informed me of the said Offence; and that you distribute another Third Part thereof to and amongst the Poor of the Parish of *L.* where the said *J. O.* was committed; and that you pay the other Third Part to the aforesaid Sir *T. B.* being the Owner of the said Deer: And if it shall happen that the said *J. O.*

D. 3. shall

shall not have any Goods or Chattels within your Parish sufficient to satisfie the said Forfeiture of 30 *l.* that then you certifie me thereof, that such further Order may be taken therein as is pursuant to the said Statute. And hereof fail not, &c.

A *Mittimus* for want of Distress, viz. To remain in Gaol for a Year without Bail, and at the End of the Year to stand in the Pillory for an Hour.

Council on 13 *Car. 2. c. 10.* pray'd the Filing of a Conviction for Deer-stealing, being returned on *Certiorari*, may be stayed; because if this Court (*B. R.*) be once possess'd of the Cause, they cannot execute it by reason of the expresse Words of the Statute, which orders Execution by Warrant under that Justice's Hand that convicted; and *per Cur'*, it was remitted. But *per Cur'*, Because Error lies not on such Conviction no more than for shooting with a Gun; therefore whether it shall go back by *Procedendo* or not; *adjournatur*: Afterwards a *Procedendo* was awarded, 1 *Keb. 813.* *Gawdy v. Felton.* Coun-

*Execution
for Deer-
stealing
must be by
the Justice
that com-
mitted.*

Council prayed, That one brought
hither (*B. R.*) in Execution on Judg-
ment for Deer-stealing in *Bedfordshire*,
might be bailed on Writ of Error,
put in and affirmed it had so been
done heretofore, which the Court
denied: For when one is in Execution, *Ore in*
they cannot supersede it by Error, but *Execution*
he must continue committed; else *not to be*
there would no Remedy to bring him *superseded*
into Custody, in case the Judgment *by Error.*
should be affirmed: But on *Aud' Quer'* *Audita*
the Party is discharged by Bail, be- *Querela.*
cause this is a new Suit, and the Party
is never to be taken again, 2 *Keb.* 43.
The King against Whitmore.

Per Statute 3 *Jac.* 1. c. 13. Selling
Deer, forfeits 40 s.

Indictment against one for hunting
by Night in a Park, and conceal-
ing the same.

*ff. Furatores pro Dom' Rege super sa-
crament' suum present', qd' (tali die &
Anno) inter horas decimam & undeci-
mam in nocte ejusdem diei A. B. de C.
in dicto Comitatu gen' D. E. & G. H.
de F. in dicto Comit' Husbandmen,
aggregati sibi nonnullis aliis malefactori-*

bus ignotis ad numerum sex personarum Vi & Armis, videl't prelongis baculis arcubalistis & sagittis clausum & parcum dicti Dom' Regis apud D. in dict' Comitatu fregerunt & intraverunt & unum par damarum dict' Dom' Regis, (Angl' vocat' a Brace of Bucks) in dicto parco adtunc & ibid' depascend' invent' illegitime venati sunt ac cum duabus sagittis ex dictis arcubalistis emissis & sagittat' adtunc & ibid' occiderunt & asportaverunt contra pacem dict' Dom' Regis. Ac qd' postea die sequent', videl't 3 die dicti mensis August. An' supradict' T. S. tunc Parearius dict' Dom' Regis dicti sui parci de C. præd' in Com. præd. informav' apud C. prædict' T. V. unum Justiciar' pacis dicti Dom' Reg' in Com' præd' de illicita venatione prædicta modo & forma præd' fact'. Qui quidem Justiciar' superinde Warrantum suum in scriptis postea, videl't 3 die Aug. Anno supradict' direxit cuidam H. M. uni Constabular' Hundredi de S. in Com' præd' (in quo quidem Hundredo sitæ sunt præd. ville de C. & F. eo tenore ut idem Constabular' arrestaret prænominat' A. B. D. E. & G. F. ac eosdem coram eod' Justiciario duceret & haberet ad eos de dicta illicita venatione examinand'.) Et qd' dicti

dicti A. B. D. E. & G. F. postea scil't dicto 3 die Aug. Ann' supradict' coram dicto Justiciario apud C. præd. in Com' præd' per Constabular' præd' virtute dicti Warranti adducti & per eund' Justiciar' per suam discretionem de dicta illicita venatione & defæctoribus in ea parte examinat' existentes prædictam tamen venationem voluntarie & felonice concealaverunt & eorum quilibet voluntarie & felonice concealavit contra pacem dict' Dom' Reg' coronam & dignitat' suas necnon contra formam cujusdam Statuti in Parlamento Dom' Henrico nuper Reg' Anglie Septimi tent' Anno Regni sui primo in hujusmodi casu edit. & provis'.

By Statute 19 H. 7. c. 11. none shall keeper any Deer-Hays, or Buckstalls, save in his own Forest or Park, in Pain to forfeit for every Month there so kept 40 s. neither shall any stalk with any Bush or Beast to any Deer, except in his own Forest or Park, on Pain of 10 l. by 5 Eliz. c. 21.

Per Statute 33 Eliz. c. 10. None shall hunt or hawk with his Spaniels in standing Corn, or before it is shocked, except in his own Ground, or with the Owner's Consent. on

D. 5.

Pain:

Pain to forfeit 40 s. to the Owner of the Ground.

Vide Forest.

Hunting in Ground inclosed, Aiders and Assistors:

Penalty for every Deer taken or killed. See *Game-Law*, Part I. Sect. 23, 24, 25, 26, 27, 28.

Pulling down the Pales of a Park. See *Game-Law*, Part I. Sect 29.

Of Soldiers destroying Game, and the Penalty. See *Game-Law*, Part I. Sect. 30, 31.

If the Offender against Stat. 3 & 4 W. & M. pay not down the Money.

One Peckham was convicted on this Act for stealing a Deer, which Conviction being removed into the King's-Bench by *Certiorari*, and filed, these Exceptions were made.

The Conviction being made on this Statute, the Prosecution ought to have been within Twelve Months, which was not, for the Offence appears to be done Aug. 14. 7 W. 3. and the Information was exhibited

Aug.

Aug. 13. 8 W. 3. and not before ; and an Information is no Prosecution. To which it was answered and ruled, that the Record sets forth, That the Defendant, Debito modo & secundum formam Statuti convictus fuit, which is well enough, 5 Mod. 321. Rex against Peckham.

One Chandler was indicted for Deer-stealing on this Act.

Exceptions to it :

1. That the Days of Killing doth not appear.

Cur', If the Killing was within a Year before the Indictment, it is sufficient.

2. Exception was against the Form of the Indictment: It ought to have been, that if there were not sufficient Distress, then to be imprisoned.

Cur', It's sufficient to set forth the Forfeiture in the Indictment ; and it's well enough, though it appear not whether the Conviction were upon Confession or Evidence.

If a Deer be hunted by the Plaintiff in a Forest, and afterwards by hunting it be driven out of the Forest, and the Forester follows the Chase,
and

and the Plaintiff kills the Deer in his own Ground, yet the Forester may enter into the Plaintiff's Lands, and retake the Deer. Property in the Deer is by Pursuit, 12 H. 8. 9. cited in 2 Leon. 201.

F O X.

Justification in Trespafs for hunting
Badgers and Foxes.

E^T præd' J. H. quoad tot' transgres-
sion' præd. in præd' Loco vocat' B.
cum pertin' de novo assign' superius fieri
supposit' preter fractionem clause præd' &
foditionem soli præd' dicit qd' ipse non est
culpab'. Et de hoc, &c. & quoad fraction'
clausi præd', ac foditionem soli in præd'
clauso vocat. B. de novo assign' superius
fieri supposit' dicit qd' actio non, &c. Quia
dicit qd' infra præd' claus' vocat' B. de
novo assign' ante præd. tempus quo, &c.
ibid' quædam Latibula (vocat' Earthie) &
Antra (vocat' Dens) quibus Taxi (Ang-
lice Badgers) & Vulpes existen' animalia
noxia & quæ usi fueri occidere oves &
agnos ac talia animalia beneficiâ &

natif-

necessar' pro victu ac sustentatione homi-
 num seipsos intrenchaverunt & interiave-
 runt. Et idem J. ulterius dicit, qd' ipse
 (tali die & Anno) in quodam clauso terre
 vocat' A. invenit Tramitem (Anglice the
 Trace) duorum taxorum existen' noxia
 animalia, & quæ usi fuer' agnos & oves,
 & talia animalia occidere, & eadem
 Tramite præd' taxorum sic invent' præd'
 clauso vocat' A. in præd', clausum vocat'
 B. de novo assign' præd' tempore quo, &c.
 fugavit & venatus fuit, in quo quidem
 clauso de novo assign' præd' duo taxi præd',
 tempore quo, &c. in eisdem Latibulis &
 Antris in eod' clauso de novo assign' in-
 trenchiavere & adtunc seipsos intraver'
 per qd' idem J. H. præd' tempore quo,
 &c. ad occidend' & destruend' eos sic
 subter terram ut præfertur seipsos intren-
 chian' & intran' in solo præd' clausi vocat'
 B. adtunc & ibid' fodiis & taxos illos
 e Latibulis & Antris præd' in præd' clauso
 de novo assign' existen' præd' tempore
 quo, &c. fodiit, & eos adtunc & ibid'
 occidit & destruxit, prout ei bene licuit.
 Quæ quidem fugatio & venatio Taxor'
 præd. in forma præd' fact' ac fodicio soli
 præd' in præd' in clauso vocat' B de novo
 assign' sunt eadem fractio clausi præd' &
 fodicio soli præd'. Unde præd' J. B.

sup.

superius versus eum queritur, & hoc paratus, &c.

Trespas was brought for hunting and breaking of Hedges: And the Case was; A Man started a Fox in his own Land, and his Hounds pursued him into another Man's Land; it was holden, that he may hunt and pursue him into any Man's Land, because a Fox is a noisome Creature to the Commonwealth, *Poph. 163.*

Johannes Engaine tenet unam carucatam terre in E. in Com' Hunt', per Serjeantiam currendi ad Lupum Vulpem & Cattum, & amovendi omnem virminam extra forestam Dom' Regis in Com' isto, Pl. Co. 14 Ed. I. Rot. 7. Dorso Hunt.

Walter Agard claimed to hold by Inheritance the Title of Escheator and Coroner through the whole Honour of Tutbury, in Com' Staff', pro quo officio nullas Evidentias vel Chartas vel alia scripta proferre possit nisi tantum cornu venatorium album argento inaurato in medico & utriq; sine decorat' cui etiam offigitur cyngulum bissi nigri fibulis quibusdam argenteis ornatum; i. e. A white

white Hunter's-Horn garnished with Silver, inlaid with Gold in the Middle, and at both Ends; to which is affixed, a Girdle of Black Silk, adorned with certain Buckles of Silver.

Walterus de Bromhall tenuit quandam terram in G. in Com' Devon, per Serjeantiam inveniendō Dom' Regi quotiescunq; contigerit ipsam fugare in foresta de Dertmore, unum Arcum & per 3 Sagittas barbata, & arrentata est ad 5 s. per annum. Pl. Coron' de Anno 9 Ed.

By Statute 1 H. 7. c. 7. If any Persons shall hunt within Forests, Parks or Warrens in the Night time, or disguised, (that is, in the Day-time with Vizards or painted Faces) a Justice of Peace, upon Information, shall cause the Offender to be brought before him by his Warrant, where if he conceals the Fact, such hunting shall be deem'd Felony; but being confessed, the Offence is only finable at the next General Sessions.

Cok. 3 Inst. 76. This Act is general, and extends to all Persons of what Degrees soever, as well to Women as
to

to Men: That to hunt disguised in the Day doth equal the Case of the Night, in respect the Offenders cannot be known or discerned in regard of such Disguising, which extends to Vizards and other Disguises as well as painted Faces. *Ibid.*

This Act doth not extend to any Chase of the King, or any other Person; neither doth it extend to any Forests, Parks or Warrens in Use and Reputation only, if they be not really such in Law. *Id. fo. 78.*

The King, seised in Fee of the Honour of *Pickering*, to which a Forest is appendant, the King grants to *A.* a Bailiwick of this Forest in Fee, rendering Rent, and after grants the said Honour *cum pertinentiis* to *B.* in Fee. Resolved, That the Forest passeth to *B.* Resolved, That the Bailiff of the said Bailiwick shall attend the Service of the said Forest for *B.* Resolved, That *B.* shall have the Forfeiture of this Bailiwick upon the Misdemeanor of *A.* who gives the Forfeiture. Resolved, That *B.* the Patentee, in such Case shall answer the said Rent reserved *ut supra* to the King, and also all the Arrearages to be incurr'd after the

the said Forfeiture, if any shall happen, *Jenk. Cent. I. Case 55.*

SECT. VI.

Vide Game-Law, Part I.

Sect. 2, 10, 22, 54, 81.

P A R K,

IS a Quantity of Ground inclosed, and stored with Wild Beasts, *Tam Silvestres quam Campestris*; which a Man may have by Prescription, or by King's Grant, *Cro. Jurisd. 148.*

To make a Park, Three Things are requisite:

1. Soil.
2. Inclosure.
3. Game.

None may make a Park, Chase, or Warren, without Licence of the King, for this is *Quodammodo* for those which are *Feræ naturæ*, and *in nullius bonis* to himself, and to restrain them from their natural Liberty, which they

they cannot do without the King's Licence.

But for Hawking, Hunting, &c. which are Matters of Pastime, Pleasure, or Recreation, there need be no Licence, but every one in his own Land may use them at his Pleasure without any Restraint, unless by Act of Parliament, as appears by the Statutes of 11 H. 7. c. 17. 23 Eliz. c. 10. 3 Jac. 1. c. 13.

It is said in *Pemble and Sterne's Case*, that Ejectment will not lie of a Park, nor of Pawnage. *Vide 2 Keble 464.*

*Park to
be inclos'd.*

Forfeiture.

One may have a Park within a Forest by Prescription or Grant; but then the same ought to be kept so inclosed, that the Beasts of the Forest cannot enter into the Park, which if not done, is a Forfeiture of the Liberty of the Park: And so it is if he have a *Salterie* or Deer-leap, for the Nature of a Park is to be enclosed.

And it's said in 10 H. 7. 6. a Park consists of Soil, Inclosure, and Game; and in 15 Ed. 3. *Thomas Earl of Lancaster*, Lord of a Forest, did grant Leave unto one *John Harrington* to make a Park within the said Forest:

And

And there it is adjudged, That if the Grantee doth not so slightly inclose the Park so that the Forest Beasts may get in there, that it is a Forfeiture, and the Lord of the Forest may enter and take the Deer. *Bridgman* 26, 27. *In the Case of the King against Sir John Byron.*

The Owner cannot have Action against such as hunt in his Park, if it lie open.

The Beasts of Park or Chace properly extend to the Buck, the Doe, the Fox, the Marton, the Roe; but in a common and legal Sense, to all the Beasts of the Forest, 1 *Inst.* 233.

Stat. 13 Car. 2. c. 10.

To course, kill, hurt, or take away any Red or Fallow Deer in any Ground where Deer are kept, without Consent of the Owner, &c. *Vide sub. tit. Hunting infra.*

Indictment

Indictment for Riot in a Park, and
wounding the Keeper's Servant.

Furatores pro Domino Rege super Sacramentum suum present' qd' A. B. de B. in Com' K. Labourer, E. E. de C. in Comitatu' M. Yeoman, & J. H. de N. in Com' præd' Weaver, aggregat' riotose, routose, & modo novo Insurrectionis & in conven' illicit' & modo guerrino arriat' vi & armis, &c. Anno, &c. apud E. in Com' K. præd' clausum & parcum cujusdam S. R. Armiger' ibid' sese illicite riotose assembler' congregaver' & univ'erunt ad pacem dicti Dom' Reg' disturband' & ad tunc & ibid' in quendam K. F. gen' custod' parci præd' & in M. L. servien' ipsius K. F. in pace dicti Dom' Regis existen' insultum fecer' & præd' M. L. un' sagitt' quodam arcu tent' quem idem M. L. in manibus suis ad tunc & ibid. habuit & tenuit sagitt' & eundem M. L. cum sagitt' præd' in pectore suo percussit dantes eid' M. L. unam plagam profunditat' dimid' pollicis ita qd' de vita ejus desperabatur & alia enormia ei intuler' ad grave damnum ipsorum S. R. & M. L. contra pacem dicti Dom' Regis nunc coronam & dignitat' suas,

suas, & contra formam Statuti in hujusmodi casu edit & provis.

Park-keeper.

A Bishop was seised in Fee of a ^{New Fees} Park, to which there was the Office of ^{to the} a Keeper belonging, with a Fee of ^{Keeper of} Five Marks and a Livery, granted ^{Park not} from Time to Time by the Bishop; ^{good a-} and the Bishop doth grant the said ^{gainst the} Office, together with the Fees, ^{Succesor} *nec non* Bishop. *cum pastura pro duobus equis in eod' Parco,* which Grant was confirmed by the Dean and Chapter: The Bishop dies, and another is made Bishop; and whether this Grant were good to bind the Succesor, *Bridg. Rep. 29.*

If the Parker doth not attend on the Park One or Two, &c. Days, ^{Forfeiture.} this is no Forfeiture of the Office; but if in his Default any Deer be killed, and so a Damage to the Lord, that is a Forfeiture: For Non-user of it self, without some private Damage, ^{Of private} is no Forfeiture of private Offices; ^{and pub-} but Non-user of publick Offices, which ^{lick Offices.} concern the Administration of Justice, or the Commonwealth, is of it self a Cause of Forfeiture, *1 Inst. 233.*

Re:

Refusal to serve the Warrant of his Master, or to suffer him to hunt, or the cutting down of Trees, is a Forfeiture of the Office of Parker, *Moor Rep.* 8. n. 93. & n. 96.

*Of the
Keeper's
killing a
Disturber.*

Although the Law so privilegeth Parkers, that the Keeper may justifie the Killing of any that comes to disturb the Game by hunting, killing, &c. yet upon private Malice that he bears to any Person who comes into the Park without any Intent to hunt, and kills him, it's Murder, 2 *Rolls Rep.* 120, 121.

*Who shall
be punished
for Waste
in Park.*

Lessee of a Park commits Waste, he shall be punished in Action of Waste; but a Keeper not, but he shall forfeit it, 2 *Rolls Rep.* 357.

*In what
Cases dis-
park or not.*

A Man grants the Custody of his Park, he may nevertheless dispark it; but if he lease his Park, he may not dispark it. Grant of the Custody of a Park *Hab'*, the Park is a void *Habendum*, *Dyer* 71.

*And in
what Cases,
and what
Fees re-
main to
the Keeper
after Dis-
parkation.*

But by *Hutton's Reports*, the King may dispark his Park, and by the Disparking the Office of Keepership is gone; but if there be an Annual Fee, that remains in both Cases, be he discharged, or the Park disparked,

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Fo. 87. Sir Charles Howard's Case,
1 Crok. 59.

If the Keeper of my Park, or any *Forfeiture,*
of his Servants without his Assent of *in what*
their own Head, and without his *Cases.*
Commandment or Agreement, kill a
Salvage Beast within the Park under
his Guard being, or if he or they
abate any House within the Park, as
a Barn to lay Hay for the Deer there ;
or cut down any Trees or Under-
woods growing in the Park, and sells
them to another ; in all these Cases he
forfeits his Office. Bishop of London
Plaintiff, and Heron Defendant; *alii*⁹
of the Keeper of Inheritance, *Bendl.* 16.
4 Leon. 120. 1 Andersf. 29. 1 Inst. 233.

The Custody of a Park.

There is Difference between the
Custody of a Park, and the Interest
of a Park, *Com.* 399. If a Parker be
attainted, and pardoned, he loseth
not his Park, but he may be a Parker
notwithstanding such his Attainder :
But if the Owner of a Park be at-
tainted and pardoned, he loseth his
Park. A Parker is Matter of Ser-
vice, 10 H. 7. 6. The Keeper shall
ren-

*For what
the Keeper
is account-
able.*

render Account of the Hawks, for it is Parcel of the Profits of the Park; but Lessee for Years of a Park shall not render Account for them, 12 H. 8. 1. Lessee for Years of a Park suffereth the Pale to fall down or decay, Waste lieth; but if a Parker suffereth the Pale to decay, he forfeits his Office, God. 419.

*Disparking
takes not
away a
collateral
Prescrip-
tion of a
Modus.*

In Cooper and Andrews's Case, God. 237. Hob. 39. a *Modus decimandi* for a Park 2 s. per Annum, and a Shoulder of every third Deer killed in the Park, in Consideration of all the Tythes in the said Park. Defendant *Protestando* denied the Prescription, for Plea saith, The Park is disparked, and turned into Arable.

*What a-
mounts to
a Dispark-
ing.*

Cur', That it yet remains a Park in *habitu*, and the disparking the Park of the Deer was not any disparking of the Park, so as to take away the Prescription. Per Hobart, If a Man doth pull down his Park-Pale, the same is a disparking without any Seizure of the Liberty into the King's Hands by a *Quo Warrant'*. See this principal Case acutely argued by Hob. 39.

The Law allows drivers Acts for Convenience of the Dignity of the Person.

If a Parkerſhip be granted to an Earl without Words to make a Deputy, he may keep it by his Servants. And in many Caſes the Law allows divers Acts in Conveniency in reſpect of the Dignity of the Perſon. As if Licence be given to a Duke to chafe in a Park, the Law for Conveniency gives him ſuch Attendants which are requiſite to the Dignity of his Eſtate, 9 Rep.

It's Felony for Assembly of Twelve
to destroy Park-Pond, Conduit, or
Dove-house, 3 & 4 Ed. 6. c. 5.

A Grant of a Park & Free-Warren.

Charles, by the Grace of God, of
England, Scotland, France, and Ire-
land, King, Defender of the Faith,
&c. To all to whom these present
Letters Patents shall come, Greeting.
Know ye, that We of our special
Grace, and of our certain Know-
ledge and meer Motion, have gi-
ven and granted, and by these Pre-
sents

‘ sents do give and grant, for us and
‘ our Heirs and Successors, unto our
‘ well-beloved Subject *R. A.* of, &c.
‘ the Liberty of one Park for Wild
‘ Beasts, and also Free Warren in
‘ all his Demesne Lands, of and
‘ within his Manor or Lordship of,
‘ &c. with all Liberties which to such
‘ Liberty of Park and Warren do be-
‘ long or appertain: To have, enjoy
‘ and exercise the said Liberty of Park
‘ and Warren to the said *R. A.* his
‘ Heirs and Assigns, in all his De-
‘ mesne Lands aforesaid. Provided
‘ that the same Lands be not within
‘ the Bounds of our Forest of, &c. so
‘ that no Man can enter into the said
‘ Lands to hunt in them, or to take
‘ any Thing in them which to a War-
‘ ren belongeth, without the Licence
‘ and good Will of the said *R.* and his
‘ Heirs, under the Pain of forfeiting to
‘ Us 10 *l.* Though or for that there
‘ is no expresse Mention of the true
‘ yearly Value, or any Certainty of
‘ the Premises, or any of them, or
‘ of any Grant or Grants heretofore
‘ to the said *R.* by Us, or by any of
‘ our Progenitors, appeareth to be
‘ made, or any Statute, Act, Ordi-
‘ nance,

‘ nance, or Provision, to the contra-
 ‘ ry published, made, or provided,
 ‘ or any other Cause or Matter to
 ‘ the contrary notwithstanding. In
 ‘ Witness whereof, we have caused
 ‘ these our Letters to be made Pa-
 ‘ tents. *Witness Our Self at W. the*
 ‘ ... Day of M. in the 15th Year of
 ‘ our Reign.

A Grant of the Keeper of a Park.

‘ Know all Men, &c. That I
 ‘ A. B. Kt. Lord of the Manor of
 ‘ D. have given, and by these Pre-
 ‘ sents have granted to my faithful
 ‘ Servant C. D. the Custody or Of-
 ‘ fice of Keeper of my Park of E.
 ‘ in the County of S. and have made
 ‘ and appointed him my Parker of my
 ‘ Park aforesaid, to have and to hold
 ‘ the said Custody or Office by him-
 ‘ self, or his sufficient Deputy, (for
 ‘ whom he will be answerable to me)
 ‘ during the natural Life of the said
 ‘ C. with the Wages of 6 d. for
 ‘ every Day during his Life, to be
 ‘ taken by the Hands of the Recei-
 ‘ ver, Bailiff or Farmer of my said
 ‘ Lordship or Manor of E. for the
 E 2 ‘ Time

‘ Time being, during the Life of the said
‘ C. out of the Rents and Profits of the
‘ said Manor, with the Appurtenances,
‘ at the Feast of, &c. by even and
‘ equal Portions; and one Robe, such
‘ as my Servants have at the Feast of
‘ N. when I and my Heirs shall be
‘ pleased to give such Liveries. And
‘ if it shall happen, &c. (to be arrear)
‘ then to distrain, and the Distresses
‘ so taken, lawful to carry away,
‘ lead or drive, and the same with
‘ him to retain, until the Wages afore-
‘ said, and all Arrearages thereof, if
‘ any be, to be fully satisfied and paid.
‘ Wherefore I do will and command
‘ the Receivers, Bailiffs, Farmers,
‘ and other Occupier of my said
‘ Manor of E. both now and here-
‘ after to be, that out of the Rents,
‘ Issues, Farms, and Profits of my
‘ foresaid Manor, with the Appurte-
‘ nances, that he or they pay, or
‘ cause to be paid, unto the said
‘ C. D. and his Assigns, the Wages
‘ aforesaid, of 6 *d. per Diem*, at the
‘ Feasts aforesaid, by equal Portions
‘ from Year to Year during the Life
‘ of the said C. Know ye also, That
‘ I have moreover given, and by
‘ these

these Presents have granted, to the said C. D. Pasture for One Horse and Five Kine within the Park aforesaid, during the Life of the said C. to be depastured; to have to the said C. during his Life, with free Ingress, Egress, and Regress, to drive the same in and out of the said Park without any Contradiction whatsoever, so as nevertheless the said C. D. by himself, or his sufficient Deputy, for whose Doings he will answer, do well and faithfully keep and exercise the said Office. In Witness, &c.

A Licence to make a Park within the Liberty of a Forest. Vide sub tit. Licences.

It is observed by a Learned Man, That there are more Parks in *England* than in all *Europe* besides.

S E C T. VII.

*Vide Game-Law, Part I. Sect. 3,
4, 5, 20, 21, 80.*

W A R R E N.

IT is a Word derived from the German Word *Wharine*, i. e. *Custodire*.

It is a Place priviledged either by Prescription, or Grant from the King, to keep Beasts and Fowl of Warren.

The Beasts and Fowl of Warren are,

1. Hares.
2. Conies.
3. Partridges.
4. Pheasants.

The Nature of a Warren.

A Warren consists of Two Things:
Of a Place of Game, and of Liberty.

One

One leased a Manor and a Warren, and brought Waste, that the Tenant had destroy'd a Coney-burrow, and subverted it; the Action will not lie If Lessee of a Warren break the Pale, Action of Waste will lie. So if the Lessee of a Pidgeon-house stop the Holes, so that the Pidgeons cannot build, *Owen 66. Moyle's Case. Per Cur'*, It's no Waste to destroy Coney-burrows; for Waste will not lie for Conies, because a Man hath not Inheritance in them: A Man can have no Property in them, but only a Possession.

By Grant of a Warren the Soil doth By Grant. pass. *Per Coke, Rice and Wiseman's of a War* Case, the Defendant having a War- ren, if the ren in a Park, demised *Warrennam* Soil passeth. *suam, Anglice* Game, of Conies to the Plaintiff, and did covenant he should enjoy the Benefit of the Demise. The Breach was laid in killing of the Conies in the Park, *Sibi dimisso & quia ipsum in intrare & venare non premisit. Dodderidge Hæsitavit*, If I have a Warren in another Man's Land, by Grant of the Warren the Soil doth not pass. Judgment *pro Quer'*. 3 *Bulst.* 82. *Vide Cr. Eliz.* 547.

*Lease of a
Warren re-
serving
Conies.*

*Tythes of
Conies.*

Lease of a Warren reserving Conies, is good, *Keb.*

The Court granted a Prohibition on Suggestion of Suit in the Arches for Tythe of Conies of a Warren without special Custom; but because the Defendant would not swear how many Conies there were, excommunicated him, 1 *Keb.* 602. *Towerfon's Case.*

Ejectment does not lie of a Warren, 1 *Keb.* 506.

*Whether the Lord of the Soil may make
Coney-burrows, and put in Conies into
the Common.*

In *Hassard* and *Cantrel's Case*, 1 *Lut.* 107. it was objected, that the Lord may not do it, and cited *Grisel* and *Leigh's Case*, 1 *Jones* 12. and *Grisel* and *Hudesden's Case*, *Rel.* 14. which are Cases in the Point: But *per Cur'*, the Lord of the Soil may put into the Common Beasts of Warren as well as other Beasts, according to *Hudesden* and *Grisel's Case*, 2 *Croke* 195. *Vide infra.*

If

If a Commoner may justifie the killing of Conies of the Owner in the Common.

The Defendant justifies *in Trans* for killing 200 Conies; for that he there had Common appurtenant to such an House by Prescription; and because the Conies were there Damage feasant, he killed them. The Plea is not good; for the Coney is a Beast of Warren, and profitable as Deer are, and are not to be compared to Vermin; and therefore the Keeping them by the Owner of the Soil is lawful. Though it was said by *Godfrey*, that it is not any Plea; for the Owner of the Soil hath Interest in them against all Strangers, and the Commoner has nothing to do but to take his Common with the Feeding of his Cattle there, and he ought not to destroy the Profit which the Owner hath therein. The Owner of the Soil may make Fish-ponds, and the Commoner cannot destroy them, 22 H. 6. 59. 3 H. 6. 55. *Vide Owen* 114. *Cro. El.* 876. *Bellew and Langdon.*

Commoner
may not
kill the
Lord's Co-
nies, who
hath free
Warren.

Property in
Conies.

Aliter, the
Conies of
a Stranger.

In *Huddesden* and *Griffell's Case*, Cr. Fac. 195. the Commoner may not kill the Conies; and so long as the Conies are in the Lord's own Land, the Lord hath a Property in them, and may say, *Cuniculos suos*; but when they go out, he hath no longer a Property in them.

But it was after in *Hinsly* and *Wilkinson's Case*, Cr. Car. 387. that the Plaintiff was a Copyholder of the Manor of *H.* whereas a great Waste, called *L. Waste*, was Parcel, and the Copyholders of the Manor having Copyhold there, the Defendant being seised of a Parcel of a Wood, called *L. Wood*, adjoining to the said Common, maintain'd Conies in the said Wood, which ran out, and eat the Common; no Action on the Case lies. For none can say when Conies are on the Common whose Conies they be; and they cannot be said to be the Defendant's Conies rather than any others, for being out of his Soil, he hath no more Interest in them than any other, they being *Feræ naturæ*; and therefore, *F. N. B.* 87, & 89. he shall not say *Cuniculos suos*, nor *Pisces suos* in common Rivers; and

and here is no more of Action than when one suffers his Doves to flie in the Corn adjoining; And the Commoner need not be at any Mischief, for he may kill them if he can. And I conceive the Difference to be between the Lord of the Soil and the Commoner for Strangers Conies, *R. 405. Jones 356.*

No Action on the Case for killing Conies.

Trespafs for killing 18 Conies: Defendant saith, the Place where is an Heath, in which he had Common of Pasture, and that he found the Conies eating the Grass there; and that he found and killed them, and carried them away, *Prout ei bene licuit.* And per the Court, the Commoner may not kill them, *2 Leon. 201.*

Against a Stranger the Plaintiff may have his Action for killing his Conies. 2. If against a Commoner, *2 Leon.*

Vide Hodsdon & Grisell's Case, 1 Roll. Abr. 405. and Tel. 104. so the Case of Hinsly and Wilkinson.

Action on the Case against J. S. who had stored the Land adjoining with Conies without lawful Grant or Prescription, whereby the Conies come upon the Land, and thereby he loseth the

Commoner
may kill
Conies.

the Common. The Action lies not ; for that would be to create Multiplicity of Actions : And the Court gave the Reason, for that the Commoner may kill the Conies, 1 *Roll. Abr.* 405.

Prescription to hunt and kill Conies in a Common, not good, *Bridgman* 11. because it is to the Prejudice of the Owner of the Soil without any Consideration, and Conies are a Part of the Inheritance, and it is a Prescription unreasonable. 1. Because it is too general, for then the Defendant may hunt and kill as many Conies as he will ; for he doth not claim to kill a certain Number that surcharge the Common, but generally the Conies there. 2. The Defendant makes himself Judge in his own Case, to kill the Conies as often, and when he pleaseth.

Hodsdon and Grysell's Case in *Yel.* 104. Justification in Trespass, that he had Common in the Close called *B.* and that he had Five Cows put there upon the Common *ad utendum* the Common, and because *quamplurimi cuniculi* were there feeding and spoiling his Common, he in Preservation of his Common enter'd *ad fugiend' & occidend'*
the

the Conies. On Demurrer the Justification is adjudged ill, - for a Commoner may not enter to chase or kill Conies; for although the Owner of the Soil had not Property in the Conies, yet so long as they are in his Land he hath Possession, which is good against a Commoner. For if the Lord surcharge with Beasts, the Commoner may not chase them, but have his Action on the Case: But the Beasts of a Stranger the Commoner may distrain Damage feasant, or chase them out of the Common, for the Stranger has no Colour to have his Beasts there. Also Conies are Matter of Profit to the Owner of the Soil for House-keeping, upon great Debate by all the Judges of B. R. they being on the first Day of the Argument of a contrary Opinion.

So that this and *Wilkinson's Case* agree.

Who

*Who may erect a Warren, or Coneygree,
and a Lodge.*

By Charter. If one have a Warren by Charter, in all his Manor he may erect a Lodge, and make Coney-burrows in any Place; but if he claims it by Prescription, he ought to make the Coney-berries in such Places wherein they have been used, and not in others, *Gro. Jac. 156.*

*By Pre-
scription.*

The King cannot grant a Warren in another's Soil. Case against the Son of a Lord for Coney-berries erected by the Father, and continuing it by the Son, upon his Common, *Yel. 143. 2 Keb. 530.* But every Man hath a free Warren in his Soil, and every other Game.

Remedy for Damage done by Conies.

Action on the Case for storing the next Land adjoining to the Plaintiff's Land with Conies, to the Intent to destroy his Corn. *Per Cur'*, The Action is not maintainable, be it whether he had Liberty of Warren or not, because Conies are *Feræ naturæ*; yet
if

if he had not Liberty of Warren, they held the Erection to be a common Nuisance; as it is of a Dove-coat newly erected and presentable in a Leet, unless it be erected by the Lord who hath Dominion there, *Moor* 453. *Boulston* and *Hardy*, or *Parson*; so *Moor* 420, 421. Action on the Case, for that the Defendant in his own Land had made a Coneygree, where-by the Conies stray'd into the Plaintiff's Corn adjoining. The Action lies not, because they are not his Conies when they are out of the Coneygree. But the Justices held the Erection of a Coneygree or Dove-coat is presentable in Leet, and fineable there.

If a Man make Coney-borrows in his own Land, and they multiply, &c. his Neighbour may not have Action on the Case against him, for when the Conies come in the Land of his Neighbour, he may kill them; and he who made the Coney-burrows had not any Property in them, and he shall not be punished for the Damage by the Conies in which he had not any Property, when the other may lawfully

lawfully kill them, 5 Rep. 104. *Boulston's Case* is denied for Law. *Vide* in the King and *Shore's Case*.

By Indictment or Presentment.

Presentment for using a Warren without the King's Licence.

Council moved for a *Certiorari*, to remove a Presentment at *Lincoln Affizes* against the Defendant for using a Warren in the Common of *D.* without the King's Licence, which was granted. And by *Twisden* no Presentment will lie, but Action on the Case, or Parties may kill the Coney *quod non fuit negatur*, 3 Keb. 425.

Description, and no positive Affirmation of a Warren.

Exception was taken to an Indictment of Trespass for entring into his Close, called *South-Kelsy Warren*, and killing Two Conies, Price 10 d. *contra formam Statuti*. And it was quashed, because this is but a Description of Place, and no positive Affirmation that it is a Warren, 2 Keb. 389. *The King against Smith.*

Presentment in a Leet.

Presentment in the Leet for digging Coney-borrows, which is not enquirable, 2 Cr. 156. and concludes *ad commune nocumentum*, is not sufficient. If any Man have a Common in another's

ther's Warren, the Owner of the Soil can dig no new Coney berries. But because this was a Presentment at a Court-Leet and Court-Baron, and doth not distinguish at which, it's ill and void, although it conclude *ad commune nocumentum*, 2 Keb. 139. *The King against Ayer.*

Indictment for using a Warren without Licence, 3 Keb. 425. *Vide supra.*

Trespass for that he *apud E.* killed ^{Trespass} his Dog, being a Mastiff-Dog. The ^{for killing} Defendant pleads, That Sir Francis ^{a Dog that} Willoughby was seised in Fee of a Warren in *D.* in the same County, whereof ^{used to} he is and then was Warrener; and that the Plaintiff's Dog was divers Times killing Conies there, and therefore he finding him there *tempore quo*, &c. running at Conies, and there killed him, *absque hoc*, that he is guilty, *apud E. prout*, &c. And it was thereupon demurred, because he traverseth the Place only, and doth not traverse all other Places. But *per Cur'*, the Traverse is good when his Cause of Justification is local, and he need not alledge any more than that Place. And *per Cur'*, the Matter of the Justification is good also,

also, it being alledged that the Dog used to be there killing Conies, and having used to haunt the Warren, he cannot be otherwise restrained. But *Telverton* doubted, because it's not alledged that the Master was *sciens* of that Quality, or had Warning given to him thereof. *Popham*: The common Usage of *England* is to kill Dogs and Cats in all Warrens, as well as any Vermin, *Cr. Jac. 44. Wadburst v. Damm.*

Declaration in Trespas for killing and carrying away Conies, with a *Continuando*.

R. J. Querit' de H. L. in custod' marr' &c. de eo qd' ipse, &c. Anno, &c. vi & armis, &c. clausum ipsius R. vocat', &c. jacen' & existen' in, &c. in Com', &c. fregit & intravit. Et herbam suam ad valen', &c. ibid' nuper crescen' pedibus suis ambulando conculcavit & consumpsit ac aliam herbam suam ad valenc', &c. ibid. nuper crescen' cum quibusdam averiis videl't equis bobus vallis porcis & bidentibus depast' fuit conculcavit & consumpsit. Ac etiam cuniculos videl't centum par (Anglice Couples)
cuni-

cuniculorum ipsius R. ad valentiam, &c. in eod' clauso nuper invent' cepit interfecit & asportavit transgr' præd. quoad consumption' & conculationem herbe præd' pedibus suis ambuland' ac quoad depast' conculcat' & consumption' alie herbe præd' cum averiis præd' ac etiam quoad captivem & asportation' cuniculor' præd' a prædict' &c. Anno supr' usq; (talem diem) tunc prox. sequen' diversis diebus & vicibus continuando, Et alia enormia, &c.

M. 9 W. 3. Sutton versus Moody.

Action was brought for breaking the Defendant's Close, and hunting his Conies, &c.

It was argued for the Defendant in Arrest of Judgment, that no Action will lie for hunting Coneys, which are *Fera naturæ*, as 1 Cr. 553. *Greenhill's Case*. As to Deer in a Park, and Conies in a Warren, the Owner hath a special Property in them as long as they are in the Warren and Park; but if they be not in a Park or Warren he may not say *suas*, unless he had said that they were *domestique*: Indeed had it been *Warrenam suam*, it might have been good.

If Action lies for hunting Conies.

Property in Deer and Conies.

E.

E contra, It's good enough as it is, *Raft. 450. & Reg. 93. B.* There is an Action for breaking his Close, and taking away his Sparrow hawks, and certainly they are as wild as Conies. As to *Greenhill's Case* it must be meant, if they are not in the Plaintiff's Soil, then no Action lies. So *Ventris; quare pisces suos in sepeal piscaria*, it was moved in Arrest of Judgment, that the Plaintiff ought not to have called them *pisces suos*, unless they had been in a Stew or Pond, *sed non allegat*. After Verdict it shall be intended they were in a Stew-Pond, but it had been good upon Demurrer: It was good by reason of local Property; and this being after Verdict, it shall be intended the Plaintiff proved a Property.

Chief Justice: The Conies are as much in his own Ground as if they were in a Warren; and the Property is *Ratione soli*, and the Warren doth not give a greater Property.

In Evidence to a Jury in the Lord
Mounson's Case, Mich. 14 Car. 1.
B. R. it was held per Cur'.

1. That by Union of the Land and
Warren, the Warren is not extinct:
As if *A.* be Lord of the Manor of
D. in which *B.* had a Warren belong-
ing to his Manor of *S.* *A.* purchaseth
the Manor of *S.* the Warren is not
extinct, 35 H. 6.

2. That there if *A.* grant the Ma-
nor of *S.* *cum Pertinentiis* to *J. S.* the
Warren shall pass. *Against Brok. War-*
ren. 7.

3. But if *A.* there had granted the
Manor of *D.* *cum Pertinentiis* to *J. S.*
the Warren had been extinct.

4. But if *A.* there had granted the
Manor of *D.* *cum Warrena* to *J. S.* there
the Warren shall pass to *J. S.*

By Feoffment of Land without sa-
ving of the Warren, (which the
Owner of the Land had in it) the
Warren is extinct; as it is held in
35 H. 6. 56. 11 Rep. 13. b. *Alias* if
he reserve the Warren.

A. who had a Warren in his Manor by the Charter of the King, enfeoffs the King of the Manor without *Pertinentiis*, *A.* shall have the Warren, *Dyer*, 28 *H.* 8. 30. *b.*

Alias of a Warren by Prescription pertaining to the Manor.

A Man may have a Warren in the Land of another. *Per Cur^o*, *ibid.*

By Grant of the Land the Warren does not pass, *Brok. Warren.* 5. *b.*

A Man seised of a Manor in which he had Warren, makes a Feoffment of the Manor *cum Pertinentiis*, the Warren doth not pass. *Br. Warren.* 7.

Note, This is not Law, *qd' vide supra* in the second Resolution.

If I let my Falcon to flie at a Pheasant in my Land, and he seiseth the Pheasant in the Warren of another, now I may not take the Pheasant, 38 *Ed.* 3. 10. *b.*

Contra, if the others Soil were not a Warren, 12 *H.* 8. 10. *per Broke*, *Manwood's Forest-Law* 20.

Trespass by the King for the taking his Conies; the Defendant justifies by Prescription to chase in his own Land, 4 H. 4. 4,

If the King grants Warren to a Man and his Heirs, without mentioning his Assigns, yet his Assigns shall have the Warren, 14 H. 4. 6. a.

Nets and Ferrets with which one hunts in my Warren shall not be distreined by me out of the Warren, although I pursue them immediately; but within they shall, 2 Ed. 2. F. A-
moury 182, 199. *Quære Distress* 20.

So in 12 H. 8. 10. If a Man starts an Hare in his own Ground, he has a Property in it *ratione Locis*. Indeed if the Deer escape out of a Park into the neighbouring Ground, you have no longer a Property. Leave out [*suos*,] and the Jury may give Damages. Perhaps these Rabbits were for the Sustenance of his Family, and why should you deprive him of it? 5 Mod. 375.

Count by a Commoner against one who had erected a Warren upon his Common.

Surrey ff. J. W. *nuper de &c. Warrener, attachiat' fuit ad respondend'* N. B. *de placito quare cum idem Richardus, tali die & anno, fuisset servus, & adhuc seit' existit de uno messuag', &c. in P. præd' in dominico suo, ut de feod'. Cumq; etiam idem Richardus & omnes illi quorum Stat' idem Richardus adtunc habuit & adhuc habet, in dictis tenementis, cum pertin' a tempore cujus contrarii memoria hominum non existit', habuer' & habere consuever' pro se, firmariis, & tenentibus suis eorundem tenementorum cum pertin' commensam pasturæ, pro omnibus averiis suis super tenementa præd' cum pertin' levan' & cuban' in ducentis acris pasturæ, vocat' Puttenham-Common in Puttenham præd', omni tempore Anni tanquam ad tenementa præd', cum pertin' pertinen'. Cumque etiam 6 die Novembris, Anno Regni, &c. supradict' quidam Cuniculi, &c. Et unde idem Richardus, per J. C. Attornatum suum quare cum idem Richardus 1 di', &c. fuisset seitus, & adhuc*

hac seir' existit' de uno messuag' & 20
 acris terræ, cum pertin' in Puttenham
 præd' in dominico suo, ut de feod'.
 Cumque etiam idem Richardus, & omnes
 illi quorum statum idem Richardus tunc
 habuit, & adhuc habet, in tenementis
 præd' cum pertin', a tempore cujus contra-
 rii memoria hominum non existit, habuer'
 & habere consuever', pro se firmariis, &
 tenentibus suis, eorundem tenementorum,
 cum pertin' communiam pasturæ pro om-
 nibus averiis suis super tenementa præd',
 cum pertin' levan' & cuban' inducentis acris
 pasturæ, vocat' Puttenham-Common
 præd', in Puttenham præd', omni tem-
 pore anno, tanquam ad tenementa præd'
 cum pertin' pertinen'. Cumque etiam 6 die
 Nov. Anno Regni, &c. decimo septi-
 mo supradictio quidam Cuniculi in præd'
 200 acris pasturæ, vocat' Puttenham-
 Common, generare, (Anglice to breed)
 inceperunt & diversa cava in eisdem du-
 centis acris pasturæ fecerunt. Præd' Jo-
 hannes præmissa satis sciens, & malitiose
 machinans, eund' Richardum non solum
 de communia pasturæ suæ præd' de & in
 eisdem ducent' acris præd' exberedare,
 verum etiam ipsum Richardum de pro-
 ficio communie suæ præd', cum averiis
 suis

suis præd', in forma præd' percipiend'
 & bered' deprivare, & frustare, postea;
 scilicet primo die Apr', &c. pro meliori
 preservatione cuniculorum præd' sic in
 præd' 200 acris pasturæ generare & fe-
 tare, sic ut præfertur incipien' quandam
 domum, vocat' a Lodge, pro hospitacione
 (Anglice the Lodging) ipsius Johannes,
 & servien' suorum in ead' ad cuniculos
 illos sic ibid' generand' & fetan' melius
 preservand' supervidend' & totius custo-
 diend' in eisdem 200 acris pasturæ erexit
 & fecit. Et quædam Latibulæ (Anglice
 Coney-burrows) in diversis partibus
 earund' 200 acrar' pasturæ pro nutritione
 Cuniculorum & Lauritium, (Anglice Rab-
 bets) in & super easdem 200 acr' pastu-
 ræ, ut præfertur fetare & generare incipien'
 fecit & erexit & fieri & erigi causavit,
 & ramos in fundo in & circa cava præd'
 per cuniculos præd' ut præfertur fact' &
 effis' adtunc Locavit & posuit & trede-
 cim Tendiculas (Anglice Traps to catch
 Vermin) in eisdem 200 acr' pasturæ
 fixit Locavit & posuit. Et solum in
 diversis partibus earund' 200 acrar' pa-
 sturæ scidit, & cum terra inde ripas
 ibidem fecit. Et sepiclas (Anglice small
 Hedges) in per & super ripas illas po-
 suit

suit & locavit, & ratione inde cuniculi præd' sic in præd' 200 acr' pasturæ generare & fetare, sic ut præfertur incipien' inter eundem 1 diem Aprilis, & diem impetrationis hujus brevis, magnopere multiplicare, auctitavere, & fetificavere. Et cuniculi illi sic multiplicat' auctitat' (Anglice encreased) nonnulla cava in diversis partibus earund' 200 acrar' pasturæ pro eorundem generatione & fetificatione, foderunt ac fecerunt, ac herbam in iisdem 200 acris pasturæ, cum pertin' crescen' magnopere in dies depast' fuere conculcaver' & consumpsere, sic qd' idem Richardus, per erectionem domus præd', & factionem & fissionem Latibulorum & Carvorum præd' & positionem & locationem tendicularum præd' & factionem riparum præd' & positionem & locationem tendicularum prædict' nec non depast' conculcation' & consumptionem herbe præd' in præd' 200 acr' pasturæ proficuum communie pasturæ suæ præd' per tempus præd' habend' & percipiend' capere gaudere, & uti, non potuit, nec adhuc potest, in magnum præjudicium ipsius Richardi, ac in exheredationem suam manifest' ac in deprivatione ejusdem Richardi, communie suæ præd' ad damnum ipsius Richardi, &c.

A Mittimus against Persons which keep Ferrets and Nets to kill Conies, and refused to enter into a Recognizance for their Appearance at the Sessions.

To the Gaoler, &c. at, &c.

Norf. ff. ' Forasmuch as T. P. and
 ' T. R. late of R. aforesaid in, &c. being
 ' this present Day brought before me
 ' by Warrant by the Constables of R.
 ' aforesaid, and being examined, did
 ' upon their Examinations confess that
 ' they had kept and used Nets and
 ' Ferrets for the taking and killing
 ' of Conies by the Space of a Year
 ' last past, contrary to the Laws and
 ' Statutes of this Kingdom; and be-
 ' ing required to enter into Recogni-
 ' zance for their Appearance at the
 ' next General Sessions to be holden
 ' for that County, they did both re-
 ' fuse so to do: These are therefore to
 ' will and require you, and in the
 ' Name of the King, straitly to charge
 ' and command you, that you receive
 ' into Custody the Bodies of the said
 ' T. P. and T. R. whom I send to
 ' you by J. D. one of the Consta-
 ' bles

' bles of R. aforesaid, and them safely
' to keep until they shall enter into
' such Recognizance as aforesaid,
' or that they be otherwise dischar-
' ged according to Law. And here-
' of fail you not, as you will answer
' the contrary. Given under my Hand
' and Seal at my House at L. this
' ... Day of, &c.

Hill. 1648. B. R. Intr' M. 24 Caroli.
Indictment against Mr. *Will. Wyld*
and others, for riotous Entring into
a Warren.

Quod W. Wyld, &c. 1 July, 19 Car.
apud Albourn in Com' Wilts, præd' vi
& armis, &c. riotose routose & illicite
sese assembler' & unaver' & sic riotose
routose & illicite sese assemblat' unit' libe-
ram Warrenam Philippi Com' Pembroke,
vocat' Southward, riotose routose & illi-
cite freger' & intraver' & cuniculos ipsius
Comitis in libera Warrena præd', adtunc
& ibid' existen' & depascen' riotose routose
& illicite fugaver' & venati sunt ac
quatuor mille cuniculos ad valentiam cen-
tum & vigint' Librarum adtunc & ibid'
invent' riotose routose & illicite fugave-
runt ceperunt & asportaverunt, &c.

Exception was; Because it shews not in what Place the Warren was, and it may not relate to *A.* because it wants *ibid'*.

But it was argued, that it refers to the Place where the Assembly was.

Resp. Not; for it hath not *tunc* & *ibid'*, and the Assembly may be in one Place, and the Riot in another: As *Dyer* 68. *b.*

Obj. *Adtunc* & *ibid'* *existen'* helps it

Resp. Not; for *ad proximum fiat relatio*, and therefore *ibid'* refers to the Warren, and not to the Parish of *Alborn*, and *depascen'* shews it accordingly.

Obj. It's good upon the former Part, the unlawful Assembly.

Resp. Not;

1. For this is too general and uncertain, to which there can be no Answer given.

2. He doth not say to what End.

3. The Indictment is in the Copulative with [*&*], which couples all the Indictment, and makes it all one Offence.

And

And the Indictment was quash'd, because it doth not name the Place where the Warren was.

The like Indictment was then quashed for this very Error against *John Coleman* and others, for entring into a Warren in *Alborn Chase*. *Ex MSS. Report.*

SECT. VIII.

Vide Game-Law, Part. I. Sect. 31, 38, 69, 70, 71, 72, 75, 76, 77.

Fishing. Nets.

PENALTY for breaking Fish-ponds,
37 H. 8. cap. 6.

Penalty for taking Fish in any several Water or River without the Consent of the Owner. *Vide Game-Law, Part I. Sect. 69.*

Stat. 22 & 23 Car. 2. Vide Game-Law, Part I. Sect. 69.

Of Fishing in Rivers.

Right of
Fishing in
Exclusion
of others.

Proof.

On a Trial at Bar concerning the River of *Wallfleet*: The Question was, If *A.* had not the Right of Fishing exclusive of all others? *Hales.* In case of a Private River, the Lords having the Soil, it's good Evidence to prove he hath the Right of Fishing; and it puts the Proof upon them that claim, *Liberam Piscariam.*

But in case of a River that flows and reflows, and is an Arm of the Sea, there *prima facie*, it's common to all; and if any will appropriate a Privilege to himself, the Proof lies on his Side. For in case of Trespass brought for Fishing, there it is *prima facie* a good Justification to say, that the *Locus in quo est brachium maris in quo unusquisque subditus Dom' Regis habet & habere debet Liberam Piscariam.* In the *Severn* there are particular Restraints, as *Gurgites*, &c. but the Soil doth belong to the Lord on either Side, and a special Sort of Fishing belongs to them likewise, but the common Sort of Fishing is common to all. The Soil of the
tor

River *Thames* is in the King, and the Lord Mayor of *London* is Conservator of the River, and it's common to all Fishermen, 1 *Mod.* 105.

Prescription of Liberty to catch Fish by the Word [*Easement*] is very improper, 4 *Mod.* 366.

Form of the Indictment in of Trespass for Fishing in his several Piscary.

Suff. ff. *Furatores Presentant*, &c. qd' J. O. de M. in Com' præd', Labourer, (such a Day in such a Year, &c.) & *diversis diebus & vicibus tam ante quam post præd' 1 diem, &c. apud M. præd' in Com' præd' vi & armis in uno Stagno ibid' existen' libero tenemento A. S. gen' cum retibus & aliis engin' illicite piscatus fuit & diversas pisces inde videlicet centum trutas, &c. contra voluntatem & sine Licentia ejusdem A. S. ibid' cepit & asportavit, contra pacem, &c.*

Indictment for taking out of his Pond *quosdam Pisces, vocat' Carp. Fishes, de bonis & catallis J. S.* Exception was taken to this Indictment, because he doth not say how many Fishes he took, which is ill in Indictment as well as in Action, 5 *Rep. Playter's Case.* And

In Indictment saith not how many Fishes he took.

Indictments ought to be more certain than Actions, or at least as certain, that the Defendant may know to what to answer. But *Kelyng* and *Windham* over-ruled the Exception; in Actions, Damages are to be recover'd, not in Indictments; but the Party is to be fined at the Discretion of the Court, be it one Fish or more, according to the Circumstances of the Fact, and not according to the Number of the Fishes. *Twisden contra*; Indictments ought to be as certain as Actions. But the other Two ruled the Party to plead to the Indictment, 1 Lev. 203. *Dom' Rex versus Wetwang*, 1 Keb. 178. *Mefne Case*.

Form of the Writ of Trespass for Fishing in his several Piscary, and the Count in it.

Playter's Case: P. brought Trespass ver' W. *quare clausum suum fregit & pisces suos cepit*, &c. the Defendant was found guilty. It was moved in Arrest of Judgment; 1. It doth not appear by the Count of what Nature the Fishes were, whether Pikes, Tenches,

Tenches, Carps, &c. 2. It doth not appear the certain Number of them, but it is generally *pisces suos cepit*. *Per Cur'*, The Count is insufficient; it ought to comprehend the Fishes in certain, and the Omission of the Nature and Number of the Fishes is Matter of Substance. Writ *Quare piscem suum cepit* is good, for *pisces* is *nomen collectionis*, 5 Rep. 34. b.

Trespals for a several Fishing, on Not guilty in Evidence at the Bar. If the Plaintiff derive a Title as high as the Abbies, he need not shew any Patent from the Crown, but the constant Enjoyment is sufficient, unless one be sued by the Crown. A several Piscary *usq; ad filum aquæ* cannot be counted on, but such Evidence might be given by Metes and Bounds. 1 Keb. 290. Sir Christ. Guise against Adams, Kel. 53. b. Tr. Brooke. 425. Title derived as high as the Abbies.

An Ejectment lieth not of a Park, 1 Cr. 491. which is but a Liberty, as a Piscary, but must be by the Number of Acres, 2 Keb. Pemble and Sten, 460. Ejectment of a Piscary, how.

It

Piscina
in Indict-
ment ill.

It was excepted to an Indictment, *Quod piscerunt in quadam piscina J. S.* and took and carried away divers Fish in the Night with Nets, *contra formam Stat' 5 Eliz. c. 11.* But per Cur', being not *riotoſe aſſemblaverunt*, but only *vi & armis*, without Licence & *illicite*, it was ill at the Common Law, but on the Statute it's well enough; but this is a Word insensible, for which there is a proper Word, and inclined it was ill, 2 *Keb. 594.* *The King against Marshall, & alias.*

Not saying
of what
Kind, if
aided by
the Sta-
tute.

Trespafs *Quare pisces ſuis cepit*, not ſaid of what Kind. Serjeant *Pember-*ton prayed Judgment; this being aided by Verdict eſpecially on the 16 & 17 *Car. 2. c. 8.* the Nature of the Action, nor Trial of the Iſſue, being not hereby altered, to ſhew what Fiſhes, for theſe muſt be particularly ſhewed in Evidence, and the Damages being aſcertained. *Hale* Chief Juſtice, One fiſhing in *ſeperali piſcaria*, and taking *inde Anguillas, &c.* it's uſually ſaid what Number a *fortiori* here, which is as general as taking Cattle or Cheeſes, or *pullos equinos*, not ſhewing the Kind or Number, both which

which are uncertain and void. Ad-
judged; *Ideo quære*, 3 Keb. 507. Bur-
rage's Case.

*Warrant against one keeping Nets, being
not qualified to search for them.*

Suff. ff. ' Whereas Complaint hath
' been made to me, that the Fish
' in, &c. have lately been destroyed
' by some idle and disorderly Persons
' not qualified by Law, either as ha-
' ving a free Fishery, or being Owners
' thereof, or otherwise lawfully au-
' thorized to fish in Navigable Ri-
' vers; and that several Nets, Leaps,
' Piches, and other Instruments and
' Engines, are kept in the Parish of,
' &c. for the Destruction of Fish, by
' Persons who are not Makers or
' Sellers thereof, contrary to the Sta-
' tute in that Case made and provi-
' ded. These are therefore to re-
' quire you forthwith to enter into
' and search the Houses, Out houses,
' and other suspected Places within
' that Parish, or of such who you
' are informed have any Nets, or
' other Instruments, for the Destru-
' ction

' ction of Fish, and to seize the same
 ' where you shall find any such, and
 ' likewise to bring the Person, in
 ' whose House it shall be found, be-
 ' fore me, or some other Justice of
 ' the Peace of this County, to answer
 ' the Premisses. And hereof fail not,
 ' &c.

In 4 & 5 W. & M. an Act for the Encrease and better Preservation of Salmon, and other Fish, in the Rivers within the Counties of *Southampton* and *Wilts*.

And the Statute 1 *Eliz. c. 17.* taking Fish out of Season, or under Size.

Statute 3 *Car. 2. c. 9.* against fishing unlawfully in the River *Severn*.

N E T S.

Nets used to destroy Fish may be burnt by One Justice.

Second Offence, Commitment for a Quarter of a Year.

Third Offence, Commitment for a whole Year, and as the Offence, so the Punishment to encrease, 17 *R. 2. c. 9.*

By Statute 3 *Jac. c. 12.* Drag-nets must not be used within Five Miles
of

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of the Mouth of any Haven, unless Three Inches in Mesh; except in *Norfolk*, for the taking of Herrings and Pilchards.

Canvas Nets, or other Devices, shall not be used to destroy Spawn: The Offender forfeits his Nets, and 10s. to the Poor, to be levied by Warrant from One Justice. *Ibid.*

Statute 13 & 14 Car. 2. c. 28. Fishing on the Shoar of *Cornwall* or *Devon* with a Drift-Net, Trammel or Stream-Net, or other Nets of any Sort, from the 1st of *June* to the last of *October*, forfeits the Nets, or the Value of them, and must be committed for a Month.

Wears erected along the Sea-shore, Haven, or Creek, or within Five Miles thereof, forfeits 10*l.* to the Queen and Prosecutor.

Information on Statute 2 H. 6. c. 15.

On a Trial at Bar the Case was upon the Words of the Act, which are, That every Person which setteth or fasteneth in the River of *Thames*, any Nets or Engines called Trincks, or any manner of Nets, to any Posts, Boats,

Boats, Anchors, or the like Thing, to stand continually Day and Night, forfeits 5 *l.* for every Time to the King. And the Defendants fasten'd Nets there to Boats Day and Night, so long as the Tide did serve, and not continually. *Per Cur'*, It is within the Statute; for [*continually*] shall be taken continually so long as they may stand to take Fish, and as the Time of Fishing endures: And the Mischief was by the fastening of them, and the standing of them continually, the Fry of Fish were destroyed, 12 *Rep.* 89.

Council excepted to an Indictment for fishing with a Net not exceeding Two Inches and an half in the Mesh. And *per Cur'* it's ill, and quash'd, for it should be exceeding Two Inches, 2 *Keb.* 635. *The King v. Hackins.*

In Trespass for breaking his Net, and not guilty, Evidence is for a Piscary, full Costs was prayed on Stat. 24 *Car.* 2. *cap.* 9. But Issue being not guilty, and no Title in the Declaration, nor certify'd by the Judge of Assize, that Title was in Question, the Court refused to give more Costs than Damage, 3 *Keb.* 121. *Earl of Pembroke and Weshall.*

Indictment for fishing in a Pond.

Suff. ff. *Fur' presentant, &c. qd' J. O. de M. in Com' præd' Labourer, &c. die Maii, &c. & diversis diebus & vicibus tam ante quam post præd' prim' diem Maii apud M. præd' in Com' præd' vi & armis in uno stagno ibid' existen' libero tenemento A. S. gen' cum retibus & aliis engin' illicite piscatus fuit & diversas pisces inde videlicet centum trutas, &c. contra voluntatem & sine Licentia ejusdem, &c. ibid. cepit & asportavit, contra pacem, &c.*

It was doubted in *Molineux's Case*, Cro. Jac. 146. If Ejectment lies of a Piscary.

A Lease of a Messuage, with certain Land, Woods and Mines thereto appertaining, and also a Power of Fishing upon the said Grounds.

' *This Indenture, made, &c. between R. C. of M. of the one Part, and G. G. of the other Part: Witnesseth, That the said R. C. &c. hath demised all that Messuage, &c. and*

' and all and singular the Woods, Un-
 ' derwoods and Trees, &c. and all
 ' and singular the Mines now grow-
 ' ing, lying, or being in or upon
 ' the Premises, by these Presents de-
 ' mised, or any Part thereof: Power
 ' to cut the Wood, Power to open
 ' the Mines, &c. and one Pond
 ' made upon Part of the said Pre-
 ' mises, and the Bank, Bays and
 ' Sluces thereunto belonging, with
 ' Liberty to dig Earth and Clay for
 ' the Mending thereof, and all Fish
 ' and Fishings in the said Pond; and
 ' also all the Fish now being, or
 ' which at any Time during the Term
 ' hereby granted shall be, in Three
 ' Marlpits hereafter expressed, that is
 ' to say, &c. together with free Li-
 ' berty and Authority from Time to
 ' Time, and at all Times during said
 ' Term, for him the said R. C. his
 ' Heirs and Assigns, to come and
 ' go from the said Marlpits, or any
 ' Part of them, with Angles, Engines,
 ' or by sewing and letting out of the
 ' Water, or otherwise, as to him or
 ' them shall seem good to fish. To
 ' have, &c. for and during the natu-
 ' ral, &c. Yielding and paying, &c.
 ' at

‘ at the Manor-House of the said
‘ R. C. called, &c. *Nomina pœne*, for
‘ the Rent reserved, and Distress.

‘ *Roger La Zouch*, being Lord of
‘ the Manor of *Tong* in the County
‘ of *Salop*, did in *Henry* the Third’s
‘ Time grant to *Henry Hugford* and
‘ his Heirs, certain Messuages and
‘ Lands in the Parish of *Tong*, with
‘ Liberty of Fishing in the Waters,
‘ and Pawnage for Hogs, rendring
‘ yearly to the said *Roger* and his
‘ Heirs a Chaplet of *Roses* on *Mid-*
‘ *summer*-day, if he should be then at
‘ *Tong*, if not, then to put it upon
‘ the Image of the blessed Virgin in
‘ the Church of *Tong* for all Ser-
‘ vices.

S E C T. IX.

As to what Sort of Property a Man may have in Salvage Beasts and Fowl, or not.

WHere a Man may have *Jus Proprietatis* or *Jus Privilegiis*, or Property absolute, qualified or possessory. *Vide 7 Rep. fo. 17. & vide Game-Law, Part I. Sect. 77.*

As for the Declarations in such Cases, *Trover* for a Spaniel is good; *Quare Warrenam fregit & cuniculos suos cepit*, is good. So taking away and killing his Hawk, *Quare cervum cepit*, in *Lindsey* and *Hudson's Case* is adjudged good. *Per Windham, Quare pisces suos cepit in Libera piscaria*, after Verdict, was adjudged nought, *1 Crok. 544. 1 Keb. 53, 60. Usher and Bushler.*

S E C T. X.

Shooting. Guns.

Stat. 33 H. 8. c. 6. *Vide Part I. Sect. 7,*
16, 18, 19, 54, 64, 65, 67.

Who may

NONE under 100 *l. per Annum* keep Guns.
Inheritance, or Lease of Ninety
nine Years of 150 *l. per Annum*, may
keep Guns or Pistols; and he who
hath so much by the Year, may take
a Gun from him who hath not, and
break it, or forfeits 40 *s.* He who
keeps a Gun, not qualified, forfeits 10 *l.* *Travel*
So likewise none may travel with a *with Guns.*
Gun charged, who hath not 100 *l.*
per Annum, except in Time of War,
or going to or from Muster; the For-
feiture is 10 *l.* *Vide Part I. Sect. 64, 65.*

Le Roy against Sanders, Sid. 419.

S. was convicted before Justices of
the Peace for shooting in a Gun
against the Statute 33 H. 8. c. 6. and
committed to the Gaol in Surrey;
and

and upon *Habeas Corpus*, Exceptions were taken to the Return :

1. That the Caption is taken before *J. S.* and *J. N.* *ad pacem conservand'*, and without *assignat'*, and without saying *Iusticiariis* ; and so he may appear to be but a Constable.

2. This appears to be a Conviction by Oath, where the Statute saith Proof and Examination, which ought to be intended by Jury.

3. It doth not appear it was before the next Justice, as it ought to be.

4. It appears not by the said Return that the Statute had been claimed in the same County, where there is express Proviso in the Statute, that none shall be punished upon it before it is proclaimed ; which *per Twisden* ought to appear in the Return, though perhaps the Statute was proclaimed an Hundred Years since.

Another Exception is mentioned by 2 *Keb.* 537. in his Report of this Case :

Because by the Statute 33 *H. 8. c. 6.* it ought to be by Inquest in the Sessions ; but where the Justices may proceed

ceed without Jury, as for Swearing, and on the Statute of Conventicles, the Statutes are general by Confession, Hearing. Chiefly quash'd upon the first Exception.

Council excepted to an Indictment on 33 H. 8. c. 6. for shooting in an Hand-Gun, and killing Hares, not shewing that the Party was not worth 100 l. per Annum. *Sed non allocatur*, for it must be shewed on the other Side, that he is worth so much to discharge him. But it being that he killed *Lepos*, (*Anglice* Hares) it's ill. And also it was *Ad Session' dicti Dom' Regis*, and saith not *nunc*, and it was quash'd. *The King against Woolf*, 2 Keb. 582.

What Shooting at Fowl is unlawful, and the Penalty. Vide Part. I. Sect. 48, 54, 67.

Per Stat. 1 Jac. c. 27. & 7 Jac. c. 11. shooting at Duck, Growse, Heron, Heathcock, Mallard, Pheasant, Partridge, Pigeons, Teal, Widgeon, and being convicted before Two Justices by Oath of Two Witnesses, or by Confession, must be committed for

for Three Months without Bail, or pay 20 s. for every Pidgeon killed to the Church-wardens where the Offence was committed.

By the *Stat. 2 & 3 Ed. 6. c. 4.* this Statute is in Force; by which it is enacted, That no Person shall shoot in any Place with any Hail-shot, or more Pellets than one at one Time, upon Pain to forfeit 10 l. for every Offence, and Imprisonment for Three Months. And no Person under the Degree of a Lord of Parliament, shall shoot in any Hand-Gun within any City or Town at any Fowl, or other Mark, upon any Church, House, or Dove-coat.

Now in the Case of the King against *Alsop*, 4 *Mod.* 49. The Defendant was convicted before the Justices of Peace in Sessions upon Indictment on that Statute, and upon that Conviction he was committed, and afterwards brought an *Habeas Corpus*; and being in Court, several Exceptions were taken to the Indictment, which the Court not much regarded. But the Question was, Whether the Justices of the Peace have

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Cognizance of this Matter? *Per Cur'*, The Justices of Peace by the general Words of their Commission, have Power to punish Offences against any Statute made for the Peace of the Realm: But by this Act the Peace is no Ways concerned, because the Offence thereby created is for want of due Qualification of the Person to shoot, which is not an Offence against the Peace. And it's not an Indictment on the Statute of *H. 8.* because they do not set forth the Length of the Gun, which by that Law ought to be a Yard long; and therefore the general Conclusion, *Contra formam Statuti*, will not help it: And the Indictment was quash'd. But it was agreed, That the Party might be indicted for this Offence before the Justices of Oyer and Terminer; but not before Justices of Peace for want of Jurisdiction.

In the Case of the King and *Silcot*, 3 *Mod.* 281. the Defendant was convicted before a Justice of the Peace upon the Statute 33 *H. 8. c. 6.* for keeping of a Gun; and upon Proof

G

it

Non ha-
buisse
100 l. per
Annum,
and saith
not when.

it did not appear that he had 100 l. *per Annum*. The Record of the Conviction was removed into the *King's-Bench*, and this Exception was taken to it, *viz.* *Non habuisset 100 l. per Annum*, but doth not say when; for it may be that he had 100 l. *per Annum* at the Time that he kept a Gun, but not when he was convicted. *Per Cur'*, This is a Conviction before a Justice of the Peace, and therefore the Time when this Offence was committed should be certainly alledg'd, *viz.* That the Defendant *predicto die & anno* had not 100 l. *per Annum*: Wherefore it was quash'd. 3 *Mod.*

Convicted
before a
single Ju-
stice.

It's said, 4 *Mod.* the Person shooting, not having an 100 l. *per Annum*, cannot be convicted by a single Justice, unless he be brought before him *instantanter* upon View of the Offence.

Any Person may bring an Offender against the Statute 33 H. 8. c. 6. before the next Justice, who upon Examination and Proof may commit him to Prison till he hath paid the 10 l. one Moiety to the Queen, the other to him who takes the Offender.

Per

Per Stat. 3 Jac. 1. c. 13. Guns used by any one not having 40*l.* *per Annum*, or 200*l.* in Goods, to kill Deer or Conies, any Person having 100*l.* *per Annum* may take them away, and keep them for his own Use.

Shooting must not be near a Market-Town, but in Defence of his House or Person, or at a dead Mark, on Pain to forfeit 10*l.* between the Queen and Prosecutor.

Persons excepted out of this Act.

1. Shooting at Buts by Servants whose Masters are qualified.

2. Those who dwell alone, or near the Sea-Coast.

3. Gun-makers, and those who sell them.

5. Those who have Licences at Quarter-Sessions.

Game-keepers searching for Guns, &c.

Vide Game-Law, Part I. Sect. 18.

Per Stat. 22 & 23 Car. 2. c. 25. Game-keeper, or any other Person thereto authorized by Warrant under the Hand and Seal of any Justice of

G 2 Peace

Peace of the same County, Division, or Place, may in the Day-time search the Houses suspected, &c. to seize Guns, Bows, &c. and the same to detain and keep to and for the Use of the Lord of the Manor, or otherwise to cut in Pieces and destroy, as Things prohibited by this Act to be kept by Persons of their Degree.

In *Bowkly and William's Case*, *Lut.* 502. In Trespass for entering into an House, and taking the Plaintiff's Gun, by Vertue of the Statute 22 & 23 *Car. 2. c. 25.* The Statute recited, and pleads, that Sir *J. W.* was seised in Fee of the Hundred of *B.* and of a Court-Leet there, and shews a Warrant of a Justice of Peace to search within the Manor of *M.* that the Manor of *M.* was within the Liberty of *W.* Averment, That the Plaintiff was not qualified; that the Plaintiff was suspected, and the Cause of Suspicion as ought to be. *Pro Quo, &c.*

Where the general Issue may be pleaded or not.

Cur. It seems that the general Issue might be plead in such Case, because the Defendants have acted by Force of

of a Warrant of a Justice of Peace. But *Quære*, If one meerly as Game-keeper had taken the Gun, if he ought not to plead it specially? — *Justification well drawn at large.*

Conviction for shooting in an Hand-gun, against the Statute 33 H. 8. c. 6.

I Sanders's Rep. 262. Sanders's Case.

Surrey ff. Memorand' qd' hoc instant die — Anno — quidam J. D. de &c. venit coram nobis T. B. & G. B. Armig' duobus Justiciariis dict' Dom' Regis ad pacem suam in Comit' præd' conservand' & adtunc & ibid' super Sacramentum suum dixit & deposuit qd' W. S. nuper de, &c. (tali Die & Anno) habuit & custodivit quiddam tormentum, vocat' a Hand-gun, & tunc & ibid' in tormento præd' cum pulvere bombardico & plumbeis pellet' (Anglice Hail-shot) onerat' illicite & injuste sagittavit (Angl. did shoot) contra formam Statuti in hujusmodi casu edit' & provis' eid' W. S. adtunc non habente in jure suo proprio aut in jure uxor' suæ aut ad usum ipsius W. S. nec aliqua alia persona seu aliquibus aliis personis habente vel habentibus ad usum ipsius W. S. terr' tenementa

nementa feoda annuit at' seu offic' ad anum valorem centum Librarum. Et quia præd' W. S. existens attachiat' & Conduct' (Anglice brought) coram nobis præfat' Justiciariis per dict' J. D. pro offens' præd' & onerat' cum offensa præd' in forma præd' eandem offens' non potest dedicere, Ideo considerat' est per nos præfat' Justiciariis qd' idem W. S. forisfaceat & solvat' summam decem Librarum juxta formam Stat' præd'. Cujus quidem summe decem Librarum medietas solvet' ad usum dict' dom' Regis & altera medietas inde solvetur præfat' J. D. existen' primo conveyator (Anglice Bringer) dict' W. S. coram nob' pro offens' præd' juxta formam Statuti præd'. Et qd' idem W. S. committatur ad prox' gaolam com' præd' ibid' remansur' quousque solveret præd' summam decem Librarum ad usus præd' juxta formam Stat' præd'.

*Quash'd,
because it
saith not
Justicia-
riis ad Pa-
cem con-
servand'
assignat'.*

But afterwards it was removed into the King's-Bench, and it was quash'd, because the Conviction is said to be, Coram T. B. & E. B. duobus Justiciariis Dom' Reg' ad pacem in Com' præd' conservand': But this Word [*assignat'*] was omitted, for it ought to have been
confer-

conservand' assignat'; and so it doth not appear whether the Justices were assign'd to keep the Peace or not.

Another Exception was started, in that the Statute gives Authority to One Justice only, being the next Justice of the Countrey where the Offence is committed, to commit the Offender for the Forfeiture; but here it doth not appear whether any of the said Two Justices were the next Justice or not. But the Conviction being quash'd, this last was not insisted on, 1 Sand. 262.

The next Justice to commit the Offender.

For shooting Hail-shot in an Hand-gun, wherein the Statute is recited, Stat. 2 Ed. 6.

Furatores pro Dom' Rege presentant qd' cum in Statuto in Parlamento Dom' Edwardi nuper Regis Angliæ sexto apud Westm' Anno regni sui secundo inter alia ordinat' & inactitat' existit' qd' nulla persona subter gardum dicti parliament' extunc deinceps sagittaret in aliquo termin' infra civitat' vel villam ad aliquam volucrum seu aliam metam super Ecclesiam Decimum aut columbar' neque qd' aliqua persona

sagittaret in aliquo loco aliquam sagittationem, vocat' Hail-shot, aut plures glandes plumbeas quam unam uno tempore sub pœna forisfact' decem Librarum pro quolibet tempore in quo ipse contra Stat' præd' delinqueret & imprisonament' corporis sui per spatium 3 mensium prout in Stat' præd' plenius continetur. Quidam tamen J. C. nuper de B. in Com' E. Yeoman, Statut' præd' minime ponderans nec penam in eod' Content' aliquatiter verens 5 die Julii, &c. in quodam torment' (Anglice vocat' an Hand-gun) onerat' pulvere & glandinibus plumbeis (Anglice charged with Powder and Hail-shot) in quandam anat' adtunc in quadam palude in commun' campo, vocat' Neitherfield, de B. præd' in Com' præd' exist' sagit' & exoneravit (Anglice discharged) contra formam Stat' præd' ac contra pacem dict' Dom' Regis nunc coron' & dignitat' suas.

Note, In the Statute 33 H. 8. c. 6. the Word [Hand-gun] includes a Dag, though invented since the Statute; and the Word [Cross-bow] includes a Stone-bow.

SECT. XI.

Vide Game-Law, Part I. Sect. 12.

DOGS.

How they are regarded in the Eye of the Law; and what Actions may be brought for them or not; and of seizing them, and who may keep them.

TRover and Conversion lies of a Spaniel Dog, for he his reclaimed, *Hobart 363. Pells and Leman.*

Trespas lies for a Greyhound, *Cro. Jac. 463.* The Defendant pleaded, That the Dog was coursing the Hare in his Land, and therefore he took and led him away. The Plea is frivolous, whereby it seems Trespas lies.

Replevin lies of a Ferret, *Cro. Jac. 463.*

G 5

Tref.

Trespafs lies for killing his Mastiff,
2 Cro. 463.

If a Man hunt with a Tumbler in my Warren, yet I may not justifie the killing of the Tumbler with my Mastiff by my Incitation, 2 Rolls Abr. 567.

Action on the Case lies on a Promise to deliver a Lurcher sold, *toties quoties*, he should return, 1 Keb. 680. *Eliot cont' Richardson.*

Plaintiff in Action on the Case declared, That he was possess'd of a Greyhound *ut de bonis suis propriis*; and that such a Day he lost it, and that it came to the Hands of the Defendant by *Trover*; and that the Defendant afterwards in Consideration thereof promised to deliver the said Greyhound to the Plaintiff. *Per Cur'*, The Action doth not lie, because *Feræ naturæ*, of which Sort of Beast the Plaintiff hath not Property, but *Ratione fundi*, 3 Leon. 219. Ireland and Higgins, *Vide* 3 Cr. 125. Owen 93. *Het*, 80.

Of searching and seizing Game-Dogs.

Per Stat. 22 & 23 Car. 2. c. 25.
 Lords of Manors (but not under the Degree of an Esquire) may license Game-keepers within their Manor to seize Dogs not qualified.

A Justice of Peace may license any other Person by his Warrant to search in the Day-time suspected Houses, and seize and keep the Dogs of unqualified Persons for the Use of the Lord of the Manor.

Per Stat. 4 & 5 W. & M. Constables, &c. may by a Justice's Warrant search the Houses of suspected Persons; and if they find any Game-Dogs in the Possession of Persons unqualified, they must carry them before a Justice of Peace, and if they do not give a good Account how they came by such Dogs, they shall be convicted by the Justice, and shall pay not under 5 s. nor exceeding 20 s. for every Dog, one Moiety to the Informer, the other to the Poor where the Offence was committed, to be levied by Distress; and if that cannot be taken, then to be

be sent to the House of Correction for any Time under a Month, but not less than Ten Days, there to be whipped, and kept to hard Labour. And no *Certiorari* shall be to remove the Conviction, or other Proceedings, unless the Party convicted do, before the Allowance of it, become bound to the Prosecutor in 50 *l.* with Sureties to be approved by the Justice before whom the Conviction was, to pay the Costs and Charges upon Oath within a Month.

Warrant to a Game-keeper, or any other Person, to search for Dogs.

To the Constable of, &c. and to R. E. of, &c.

Suff. ss. “ These are to require you,
 ‘ or either of you, to search in the
 ‘ Day-time the Houses, or Out-houses,
 ‘ or Places, of any Person or Persons
 ‘ within the Hundred of, &c. whom
 ‘ you shall have just Occasion to sus-
 ‘ pect, or be informed, to keep Set-
 ‘ ting-Dogs, Coney-Dogs, or other
 ‘ Dogs, to destroy Partridges, Hares,
 or

or Conies, not being qualified by Law to keep the same; and the Dogs which you shall find in the Possession of such Person or Persons, to seize and keep to and for the Use of the Lord of the Manor where they shall be taken: But you are not to search the House of any Person who hath an Estate of 100 *l.* *per Annum*, or who hath a Lease of any long Term for Years of the clear yearly Value of 150 *l.* or of him who is Son and Heir apparent of any Esquire, or any Person of higher Degree, nor of those who are Keepers or Owners of Forests, Chases, Parks, or Warrens. And you are to certifie me with all convenient Speed what you do in the Premises. Given, &c.

Indict.

Indictment for keeping Hounds, not having 100*l.* per Annum, &c.

Midd. ff. Jur', &c. qd' T. W. de, &c. in Com' præd' Yeoman, 29 die Sept', Anno Regni, &c. & diversis aliis diebus tam antea quam postea apud H. præd' in Com' præd' habuit & custodivit Canes (if Greyhounds, then say, Angl' Greyhounds) ad venand' & sectand' Lepores & Caniculos, Et qd' idem T. W. die anno & loco supradictis duos Caniculos valoris sex denariorum (if a Hare, then unum Leporem valoris unius solidi) in quodam clauso R. B. de H. præd' arm', vocat' the Warren, infra paroch' præd' cum canibus præd' venatus est & occidit ubi idem T. nunquam habuit terras aut tementa aut alium statum hereditarium in jure suo proprio vel in jure uxor' sui clari annui valoris centum librar' per annum nec tempore venationis præd' habuit aliquam dimissionem vel dimissiones pro termino vitæ suæ vel pro tempore 99 annorum vel pro alio longiori tempore clari annui valoris 150*l.* neque adtunc existens filius & hæres apparen' alicujus Armig' vel

vel alie persone de altiori gradu aut proprietarius (Anglice the Owner) alicujus foreste parci chasie (Anglice a Chase) vel vivarii in dict' Dom' Regin' nunc contempt', ac contra formam Statut' in hujusmodi casu edit' & provis'.

SECT. XII.

Vide Part I. Sect. 31, 34, 54, 77.

Doves. Pigeons.

NOne may newly erect a Dove-court but the Lord of the Manor; and if any other do it, he may be punished in the Leet, but no Action on the Case lies for any particular Man, for the Infiniteness of the Actions that may be brought, 5 *Rep. Boalster's Case*. But this is denied for Law: As,

In the Earl of Northumberland's Case, *Freeholder erecting a Dove-coat no a Nuisance.*
 Pop. 141. the Question was, Whether the new erecting of a Dove-coat by

a Freeholder were a common Nufance, and punishable in the Leet. And *per tot' Cur'*, upon great Deliberation, That it is not a common Nufance, punishable or enquirable in a Leet; for a Man hath *jus proprietatis & privilegiis* in Doves. Property in respect of the Place, as Trespass lies for taking a Goshawk in respect of the Place, 22 H. 6. 39. For Hares, *Spencer's Case* in *Dyer*; and Trespass lies *Quare Columbare fregit & Columbas cepit*. There is no Remedy for the killing them; neither do they any Trespass, therefore they are no common Nufance. And as to *Coke 5 Rep. Boulston's Case*, that is only by the By, and is not agreeing with the Reason of the Principal, *Quod fuit concessam*. *Per tot' Cur'*, 'Tis true, it may be a Hurt to the Commonwealth, but not a publick Nufance, for that ought to be immediate or general; immediate it cannot be, for the Erecting of a Dove-coat cannot be immediate.

And it is not general, but particular to the neighbouring Inhabitants: And it's allowed on all Hands, that a
Man

Man may have a Dove-coat by Prescription, which could not be if it were a Nufance.

A *Præcipe* lies of a Dove-coat, and *Præcipe*. Dower and Partition, which shews it to be lawful.

As a Man cannot prescribe to do a Nufance, so the King cannot license one to do it.

It is lawful for any Man to kill the Doves on his own Land; but they must beware they do it not against any Statute, for Doves are preserved *Doves preserved by many Statutes*: As by the Statute *served by* of *Wales* in the Time of King *Edward* *many Statutes*. the First, and the Statute 18 *Ed.* 2. gives Directions, that the killing of Doves shall be presented at the Leet; and the Statute 18 *El.* c. 15. ordains that Doves shall not be shot, 4 *Jac.* 27. This Case is in *Cro. Jac.* 490. by the Name of *Dewell* and *Sanders's* Case.

And the Court held, That the Erecting a Dove-coat by a Freeholder, who is not Lord of the Manor, nor Owner of the Rectory, and replenishing it with Doves, is not any Nufance enquirable or presentable in a Leet; for nothing is enquirable there but that which

which is a common Nuisance to all People, and it's a continuing Offence, and cannot be dispensed with; therefore they held *Boulston's Case* in 5 Rep. aforesaid, to be no Law in this Point. *Vide Dewell and Sanders's Case*, 2 Roll. Rep. 4, 30, 31, 136.

*Enquirable
before the
Justices of
Assize.*

But by *Mountague* it may be enquirable of before the Justices of Assize, who have the like Authority as to such Things as the Justices in Oyer had to redress them upon the Peoples Complaint. So is *Prat and Stern's Case*, Cr. Fac. 382. a Freeholder erected a Dove-coat upon his Freehold, where there was not any before, and stored it with Pigeons: This was presented at the Leet, and a Pain assessed to amove it by such a Time; and for not amoving it he was amerced, and for the Amercement a Distress was taken by the Lord of the Leet, in which Case it was doubted, but resolved in the other Case *ut supra*. But it fell off on this Point, because he did not say in the Presentment, that it was *ad commune nocumentum Ligeorum Dom' Regis*.

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W. was indicted for erecting a Dove-coat; and the Indictment was quash'd, because it was not contain'd in the Indictment that there were Doves in the Dove-coat; for if there be no Doves kept in it, it is no Nuisance, *Godb. 284. Vesey's Case.*

Note, It is mentioned before, that Doves are preserved by many Statutes; some of which are repeated by other Statutes, and Provision made, That if the Offenders be prosecuted upon the late Statutes, not to be proceeded against on the other Statutes.

Pigeons. Vide Game-Law, Part I.

Per Stat. any Persons killing or taking Pigeons shall be committed, by Two Justices for Three Months without Bail, unless he pay immediately to the Use of the Poor where the Offence was committed, or the Offender apprehended, 20*s.* for every Pigeon so killed or destroyed.

If he doth not pay the Penalty, but is committed, then he may after Commitment for a Month be discharged, if

if he will be bound before Two Justices with Two Sureties in 20 *l.* with a Condition never to offend again in the like Nature.

Conviction must be by his own Confession, or by the Oath of Two Witnesses before Two Justices.

Prat's Case.

Licence.

Prat was distrained by the Bailiff of the Lord of, &c. for 20 *s.* imposed upon him in the Court-Leet, and for erecting and storing a Dove-coat. *Coke* Chief Justice: There is not any Reason that the Lord should have a Dove-coat more than the Tenant. And he asked the Question, where the Statute *Ed. 2.* saith, *Inquiratur de Dove coats erected without Licence, Who shall give the Licence? Ad quod non fuit responsum.* And there was a fatal Defect in the Plea in this Case, which was, That the Presentment at Leet was, that *Prat* had erected a Dove-coat unlawfully, and did not say *Ad commune nocumentum*, as it ought to be, otherwise it is not presentable in the Leet: And therefore, though
it

Part II. The Game-Law.

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it was otherwise in the Plea, that it was *Ad commune nocumentum*, the same did not help the defective Presentment, *Godb. p. 259. Prat's Case, Vide 2 Crok. 382.* by the Name of *Prat* and *Sterne's Case.*

Ad commune nocumentum omitted in the Presentment.

SECT. XIII.

Vide Game-Law, Part I. Sect. 5, 12, 18, 31, 32, &c.

H A R E S.

Per Stat. 1 Jac. 27.

THE Offender convicted by his own Confession, or Oath of Two Witnesses, before Two Justices, of killing an Hare, must pay to the Use of the Poor 20 s. where the Offence was committed, or where he is apprehended, or else must be committed without Bail for Three Months: But after he hath been in Prison a Month he shall be discharged, if he will be bound with Two Sureties before

fore Two Justices never to offend in the like Nature.

Per Stat. 5 Annæ, c. 14. If any Ale-house-keeper, Carrier, Chapman, Higler, Inn-keeper, or Victualler, having in his Custody, or who shall buy or sell, or offer to sell Growse, Hare, Heath Game, Moor, Partridge, Pheasant, forfeits for each 5 *l.* one Moiety to the Informer, the other to the Use of the Poor, to be levied by Distress, and for want thereof to be committed to the House of Correction for Three Months for the first Offence without Bail, and for the second Offence Four Months. The Manner of his Conviction, *vide* the Abstract of the Statute 5 *Annæ*.

Per Stat. 4 W. & M. If a Constable searching by Vertue of a Warrant find an Hare in the House of a Person not qualified, he must carry him before a Justice of the Peace; and if he doth not give a good Account how he came by it, or bring the Party of whom he bought it, or some Person to depose such Sale, he shall be convicted, and pay not under 5 *s.* nor exceeding 20 *s.*

Tracing, killing, or destroying Hares in the Snow, forfeits 6 s. 8 d. for every Hare. This is inquirable in Sessions and Leets, *Stat. 14 & 15 H. 8. c. 10. Vide Game-Law, Sect. 14.*

A Warrant against having an Hare in his Custody.

To the Constable and Headborough of the Hundred of B. and to the Keeper of the House of Correction at L. &c.

Suf. ss. ' Whereas A. B. of H. &c. in the said County, Higler, hath on the Day of the Date hereof been duly convicted before me R. B. one of her Majesty's Justices of the Peace for the said County, upon the Oath of R. K. of, &c. for that the said A. B. had on the 3d Day of August last in his Custody at H. aforesaid one Hare, contrary to the Statute in that Case made and provided, by reason whereof he hath forfeited the Sum of 5 l. These are therefore to require you to levy the said Sum of 5 l. by Distress and Sale of the Goods of the said A. B.
' ren.

' rendring to him the Overplus, if any
 ' such shall be, the Charge of the
 ' Distress being first deducted: And
 ' that you forthwith pay one Moiety
 ' thereof to the said R. K. who first
 ' informed me of the said Offence,
 ' and the other Moiety to the Poor
 ' of the Parish of H. aforesaid, where
 ' the same was committed; and for
 ' want of such Distress, that then you
 ' carry the said A. B. to the House
 ' of Correction at L. and deliver him
 ' to the Keeper thereof, together
 ' with this Precept, who is hereby
 ' commanded to receive him into his
 ' Custody, and to keep him in the
 ' House of Correction for the Space
 ' Three Months next ensuing the Date
 ' hereof, without Bail or Mainprise,
 ' this being his first Offence of this
 ' Nature. And hereof fail not, &c.
 ' Given, &c.

The like Warrant (*Mutatis mutan-*
dis) for buying, selling, or offering
 ' to sell, any Hare, Partridge, or
 Pheasant, or for keeping or using any
 Greyhound, Setting-Dog, Hay, Tram-
 mel, &c. or other Engine, not being
 qualified by Law to keep it. In.

*Indictment for Tracing an Hare in
the Snow.*

‘ *Furatores, &c.* Presentment, That
‘ *A. B.* late of *N.* in the County of
‘ the City of *N.* Yeoman, the 10th
‘ Day of *A.* in the Year, &c. at *N.*
‘ aforesaid in the County of the City
‘ aforesaid, one Hare in the Snow
‘ with a Dog did trace, and the same
‘ Hare then and there in the Snow
‘ with the same Dog did destroy and
‘ kill, against the Form of the Statute
‘ in that Case set forth and provided,
‘ and against the Peace, &c.

They have an ancient Custom at
Colehill in the County of *Warwick*, That
if the young Men of the Town can
catch a Hare, and bring it to the Par-
son of the Parish before Ten of the
Clock on *Easter-Monday*, the Parson
is bound to give them a Calve’s-Head,
and an Hundred of Eggs for their
Breakfast, and a Groat in Money,
Fragmenta Antiquitatis 153.

H

As

As to Officers and Soldiers destroying Hares and Conies. Vide Game-Law, Part I.

Per Stat. 4 & 5 W. & M. If any Officer or Soldier shall, without the Leave of the Lord of the Manor under his Hand and Seal, take, kill, or destroy any Hare, Conies, Pheasant, Partridge, Pigeons, or any other Sort of Fowl, or Poultry, or Fish, or their Majesties Game, and upon Complaint, being convicted on Oath of one or more Witnesses, before any Justice or Justices of Peace, who is and are hereby authoriz'd to hear and determined the same; the Officer so offending, for every Offence forfeits 5 *l.* to be distributed amongst the Poor of the Place where the Offence was committed: And every Officer commanding in Chief upon the Place, for every such Offence committed by any Soldier under his Command shall pay 10 *l.* to be distributed as aforesaid. And if such Officer after Conviction, and upon Demand, refuse or neglect to pay it within Two Days, he forfeits his Commission.

SECT.

S E C T. XIV.

Hawks. Hawking.

A Hawk taken up must be delivered to the Sheriff, if taken by ^{Hawks} a mean Man; and if it is not chal- ^{found.} lenged in Four Months, the Sheriff, having proclaimed the Hawk in the Towns of the County, may keep it.

Stealing of an Hawk, or concealing it after Proclamation made by the Sheriff, is Felony with Clergy, 37 Ed. 3. c. 19.

Trespas, for that the Defendant ^{Trespas} *accipitrem ipsius Querentis percussit* with ^{for killing} a Staff, upon which Stroak the Hawk ^{an Hawk,} died. Verdict for the Plaintiff; and ^{and shews} 6*l.* Damages. It was moved in Arrest ^{not what} of Judgment, that the Declaration was ^{Sort of} not good, because he doth not shew ^{Hawk it} she was reclaimed, nor what Kind ^{was.} of Hawk she was, whether a Goss-Hawk or Sparrow-Hawk, or a Spaw-

ner. But *per Cur'*, the Declaration is good enough, being in Action of Trespals for Striking and Killing, which he only may have who hath the Possession.

*Trover and
Conversion
for an
Hawk.*

Trover and Conversion lies not but of an Hawk reclaimed, and which may be known by her Vervels, Bells, &c.

No Trover and Conversion lies of an Hawk without alledging it to be reclaimed, because it is *Feræ naturæ*, of which he hath no Property. As is the Case of Sir Martin Lister and Hone, *March Rep.* 12. But the Court doubted, whether it may not be good after a Verdict for the Plaintiff, because it is found he was possess'd of it as of his own proper Goods, as is alledged in the Declaration, *Cro. Car.* 19. 544.

By Statute 32 *Ed.* 3. 19. He that steals and carries away an Hawk, not observing the Ordinance of 34 *Ed.* 3. 22. shall be deemed a Felon. It's said, this extends only to long-winged Hawks. of the Kinds of Falcons, and not to Goss-hawks, or Sparrow-Hawks, 3 *Coke Inst.* 97, 98. None

None shall take out of the Nest any Eggs of Falcon, Gosh-Hawk, Lanner, or Swan, on Pain of a Year and Days Imprisonment, 11 H. 7. c. 17. 5 El. c. 21.

By Stat. 7 Jac. c. 11. Every Person convicted by his own Confession, or by Two Witnesses on Oath, to have hawked at, or destroy'd, any Pheasant or Partridge betwixt the First of July and the Last Day of August, shall suffer one Month's Imprisonment without Bail, unless he pay to the Poor 40s. for every Time so hawking.

Per this Act it shall be lawful for the Lord of a Manor, or any having free Warren Inheritance of 40l. per Annum, or Goods worth 400l. or their Servants licensed by them to take Pheasants or Partridges within their own Grounds or Precinct, so they do it in the Day-time, and only betwixt Michaelmas and Christmas.

If one of mean Condition kill any Pheasant or Partridge with Dogs, Nets, or Engines, shall be committed to Prison without Bail, unless he pay 20s. for every Pheasant or Partridge.

This Game was certainly very noble, as by the Tenure, *Pl. Coronæ* 10 Ed. 1. *Cunbian Simon de Ragon, & Dom' Robertus de Fert* tenant' *unam parvam Serjeantiam in R. in Com' C. custodiendi aerias Austur' coram Dom' Regis, i. e.* the King's Aieries of Goss Hawks.

So 13 Ed. 1. Rot. 37. *H. W. tenet' 10 libratas terræ in Staunton in Com' Oxon, per Serjeantiam portandi unum Gerefalconem quolibet Ann' coram Dom' Rege quando Dom' Regi placuerit Spatiari cum hujusmodi Falconibus.*

The Lord Gray of Wilton held the Manor of Aston, in Com' Bucks, by Serjeanty, of keeping one Gerefalcon for their Sovereign Lord the King: Whereupon that Family of the Grays had for their Badge or Cognizance a Falcon Sejant upon a Glove.

SECT.

S E C T. XV.

*Vide Game-Law, Part I.**Partridges. Pheasants.**Per Stat. 23 Eliz. c. 10.*

Killing or taking of Partridges or Pheasants in the Night-time with Nets, &c. forfeits for every Partridge 10 s. and for every Pheasant 20 s. which if it be not paid within Ten Days after Conviction, the Offender must be committed one Month without Bail; and must enter into a Recognizance before one Justice, &c. with Two Sureties, to appear at the next Sessions; and being there convicted, must give Bond with Two Sureties, to be taken by one Justice, not to offend in the like Nature for Two Years, one Moiety to be recovered by the Church-wardens for the Poor.

By Stat. 1 Jac. 1. c. 27. Shooting at Partridges or Pheasants, or taking

or killing them with Setting-Dogs or Nets, or other Instruments, or taking or breaking the Eggs in their Nests, shall be committed Three Months without Bail for every Offence, unless he pay immediately upon his Conviction to the Church-wardens of the Parish where the Offence was committed, or where the Offender was apprehended, to the Use of the Poor, for every Pheasant 20 s. and for every Partridge 10 s. But after he hath been committed for one Month he may be discharged, if he will enter into Recognizance with Two Sureties in 20 l. each, that he shall not at any Time afterwards offend in the like Nature. But by 7 *Jac. c. 11.* it is 20 s. for every Partridge, being convicted by one Witness upon Oath before Two Justices, if taken between the First of *July*, and Last of *August*.

None shall sell, or buy to sell, any Deer, Hare, Pheasant, or Partridge, except by them reared up, or brought from beyond Sea, under Penalty for every Deer 40 s. Hare 10 s. Pheasant 20 s. Partridge 10 s. to be divided

ded between the Prosecutor and Poor of the Parish where the Offence is committed. *Vid. Sect. 4.*

Justices of Peace in their Sessions, or two or more out of Sessions, may hear and determine these Offences.

By this Statute the Conviction was to be by Confession of the Party, or or Oath of Two Witnesses, before Two Justices, and the Recognizance to be taken by Two Justices.

But by *Stat.* the Conviction may be by one Witness before Two Justices, and the Recognizance may be taken by one or more.

Qualifications of Persons to take Partridges, &c.

1. He must be Owner of a free Warren, &c.

2. Or, a Lord of a Manor.

3. Or have Estate of Inheritance of 100 *l.* per Annum in his own or his Wife's Right, or for Life.

4. Or a Lease of 99 Years of 150 *l.* per Annum.

5. Or the Son and Heir of an Esquire, or higher.

H. 5

By

By Stat. . . . If a Constable find a Partridge in a suspected House, he shall bring the Offender before a Justice; and if he cannot produce the Person of whom he bought it, or some credible Witness to make Oath of the Sale thereof, he shall be committed by the Justice for killing it, and forfeits for every Partridge 5 s. and not exceeding 20 s. to be levied by Distress; if that cannot be had, then to the House of Correction for any Time not exceeding one Month, nor less than 10 Days.

No *Certiorari* to be allowed, unless the Offender before Allowance become bound to the Prosecutor in 50 l. with Sureties to be approved by one or more Justices before whom the Offender is convicted, to pay the Prosecutor full Costs upon Oath within one Month after Conviction is confirmed, or *Procedendo* granted.

Keeping Setting Dogs not qualified, or Nets, and being convicted before one Justice upon the Oath of one Witness, is subject to the like Penalty.

Tref-

Trespass *vi & armis quare phasianos suos & perdices suas cepit.* Verdict *pro Quer'*. Though these are *Feræ naturæ*, and therefore there cannot be any Property in them; yet adjudg'd *pro Quer'*, because after Verdict they shall be intended to be dead, and then a Property may be in them, *Raym. p. 16. Usher and Bushwell.*

38 *Ed. 3.* cited in *Poph. 162.* Trespass was brought for entring into his Warren: And it was pleaded thereto, that there was a Pheasant in his Land, and his Hawk flew and followed it into the Plaintiff's Ground. And there it seemed not a good Justification; for he may pursue the Hawk, but cannot take the Pheasant.

So 2 *Roll. Abr. 567.* If a Man lets a Falcon fly at a Pheasant in his own Land, who pursues the Pheasant into the Warren of another, and there takes him; yet he may not justify the Entry into the Land of another to take Falcon and Pheasant.

Stealing of tame Peacocks is Felony; so of tame Herons, Pigeons, and young Hawks in their Nests; so
of

of Fishes in private Ponds. Otherwise of Partridge, Pheasant, Hare, Coney, though they are so kept that they may not escape, if they become not reclaimed, and so known to him that steals them, *Fenk. Cent. 5. Case 30.*

*Indictment for taking Partridges
without Licence.*

Suff. ff. *Fur'*, &c. qd' J. O. de H. in Com' *præd'*, Yeoman, 14 die Aug. Anno Regni, &c. apud H. *præd'* in quodam loco *ibid'* vocat' W. qui quidem locus tunc fuit & adhuc est liberum tenementum R. B. de H. *præd'* Armig' & nunquam fuit in aut de warrenna ipsius J. propria sex phasianos & viginti perdices cum quibusdam reticulis & aliis engeniis valoris 5 solid' tunc & *ibid'* cepit occidit & asportavit sine aliquo consensu agreeamenti aut speciali licentia *præd'* R. B. in hac parte prius habit' vel obtent' in dict' Dom' Reginae nunc contemptum & contra formam Stat' in hujusmodi casu edit' & provis'. 3 Bulst. 178.

SECT. XVI.

Fowl. Swan.

ALL white Swans not marked, which have gained their natural Liberty, and are swimming in an open and common River, may be seized to the Use of the King by his Prerogative. *Volatilium alia sunt regalia alia & communia.* Swan is a Bird Royal, and a Whale and a Sturgeon are Fishes Royal.

But a Subject may have a Property in white Swans not marked; as any Man may have Swans not marked in his private Waters, and the Property of them belongs to him, and not to the King; and if they escape out of his private Waters into an open and common River, he may retake them. *Aliter*, If they have gained their natural Liberty, and swim in open and common Rivers without such Pursuit.

A

A Man prescribe to have Game of Swans within his Manor, as well as a Warren or Park.

A Man may alledge a Custom or Prescription in Swans and Signets.

None may have a Swan-mark, unless it be by Grant of the King, or his Officers authorized, or by Prescription; and none may have such Swan-mark, unless he hath Lands of the yearly Value of Five Marks, *per Stat. 22 Ed. 4. c. 6.*

11 H. 7. c. 17. He that steals the Eggs of Swans out of their Nests shall be imprisoned a Year and a Day, and Fine at the Will of the King.

But how the Party shall prescribe for Swans, or for a Warren to have all Pheasants and Partridge, *Nidifican' gighen' & frequentant* within his Manor, *7 Rep. 17, 18, 19.*

Fowls are $\left\{ \begin{array}{l} \text{Terrestres;} \\ \text{Aquariles;} \text{ as Mallard,} \\ \text{Hern.} \end{array} \right.$

$\left. \begin{array}{l} \text{Terrestres} \\ \text{Silvestres;} \text{ as Pheasant, Wood-} \\ \text{cock.} \\ \text{Campestres, as Partridge,} \\ \text{Quail, Rayle, \&c.} \end{array} \right\}$

Cock.

Cok. II. *Infra* in 38 Ed. 2. Rot. P.
Part I. M. II. there is a notable Pa-
tent. *Quod vid. sub Tit. Hunting.*

SECT. XVII.

Vide Part I. Sect. 81.

LICENCES.

Incidents must go with the Prin-
cipal. If *A.* license *B.* to hunt
in his Park, and to kill a Deer, yet
B. cannot carry away the Deer, for
that is not incident to the Thing
granted. But if one grant to another
all the Fish in his Pond, he may fish
with Nets, *Godb.* 399.

A Subject that is Lord of a Forest
may grant Licence to hunt and hawk
in Forest; but no Man can grant Li-
cence to hunt and hawk in the King's
Forests other than the King himself,
or his Chief Justice in *Eyre*.

No

No Forester can grant any Warrant or Licence to another to hawk, or take any Fowls of a Warren within his Liberty.

*Diversity between Licence of Profit and
Licence of Pleasure.*

A Licence of Profit, is where a Man has a lawful Warrant to kill and carry away with him the Game that he takes.

A Licence of Pleasure, is where a Man hath a Warrant to hunt or hawk in a Forest, Chase, &c. yet he doth not thereby gain any Property in the Game he takes, and so cannot carry it away.

He that hath a Licence of Pleasure, cannot hawk or hunt with any more Company than himself. *Aliter*, where a Man hath a Licence of Profit.

A Licence may be good from one Subject to another by Word only.

Licence

Licence to Hawk, Hunt, and Fish.

‘ To all People to whom these Pre-
‘ sents shall come, I *A. B.* of, &c.
‘ Lord of the Manor of *C.* in the
‘ County of, &c. send Greeting.
‘ Know ye the said *A. B.* for good
‘ Causes and Considerations me here-
‘ unto especially moving, have given
‘ and granted, and by these Presents
‘ do give and grant unto *O. K.* of, &c.
‘ Gent. and his Assigns, full, free and
‘ absolute Power, Liberty, Licence,
‘ and Authority to hawk, hunt, fish,
‘ and fowl, from Time to Time, and
‘ and at all Times hereafter, at the
‘ Will and Pleasure of him the said
‘ *O. K.* and his Assigns, for and du-
‘ ring the natural Life of me the said
‘ *A. B.* in, upon, and within the
‘ Manor or Lordship of *C.* in the
‘ said County, and in and upon all
‘ the Lands and Grounds thereof,
‘ and within the Bounds, Precincts,
‘ Limits, and Circuits of the same,
‘ in as full, ample, free, and benefi-
‘ cial Manner and Form as I my self
‘ could do in all and every Respect
‘ or

or Degree whatsoever or howsoever,
 and without any manner of Let,
 Denial, Contradiction, or Inter-
 ruption, of me the said *A. B.* or
 of any other Person or Persons
 whatsoever in, by or through my
 Act, Privity, Means, Consent, or
 Procurement. And I the said *A. B.*
 do covenant, and promise, and
 agree, to and with the said *O. K.*
 and his Assigns, That it shall and
 may be lawful to and for the said
O. K. and his Assigns, from Time
 to Time, and at all Times hereafter
 during my Life, as Occasion shall
 be offered, to have and take as well
 all and every the Nets and other
 Engines of what Kind soever, and
 also all the Dogs and Spaniels of
 what Sort soever of all or any Per-
 sons whatsoever, that shall at any
 Time or Times hereafter hawk,
 hunt, fish, or fowl, within or up-
 on the said Lordship or Manor of *C.*
 without the Licence or Consent of
 the said *O. K.* or his Assigns, or some
 of them, thereunto first had and ob-
 tained. But to deliver unto my Ste-
 ward or Bailiff for the Time being the
 said

‘ said Nets, Engines, Dogs, and Spaniels, to be taken as aforesaid, to be used and imployed to and for my Use as I shall order and think meet. In witness, &c.

This Precedent I transcribed, as being well aimed at for a Form.

And yet I conceive it should be qualified, to be at seasonable Times, as not hunting in Standing-Corn or Mowing Grass.

And let the Grantor by his large Concessions have a Care he doth not abridge his own Power.

A Mitrimus against a Person that refuseth to enter into Recognizance to appear at Sessions, for offending against Stat. 22 & 23 Car. 2. c. 15.

To the Constable, &c. of E.

‘ Forasmuch as *A. B.* of, &c. being this present Day brought before me by Warrant by the Constable, &c. of *E.* aforesaid; and being examined, did upon his Examination confess, that he had kept and used Nets and Ferrets for the taking and killing

' killing of Conies by the Space of
 ' one Year last past, contrary to the
 ' Statutes in that Case made and pro-
 ' vided; and he the said *A. B.* being
 ' required to enter into Recognizance
 ' for his Appearance at the next Ge-
 ' neral Quarter-Sessions of the Peace
 ' to be holden for the said County,
 ' did refuse so to do: These are there-
 ' fore in Her Majesty's Name, strait-
 ' ly to charge and command you,
 ' that you receive into your Custody
 ' the Bodies of the said *A. B.*
 ' whom I send you by *J. K.* one
 ' of the Constables of *E.* aforesaid,
 ' and him safely to keep until he
 ' shall enter into such Recognizance
 ' as aforesaid, or that he be other-
 ' wise discharged according to Law.
 ' And hereof fail not at your Peril.
 ' Given under my Hand and Seal, &c.

A Licence for Apparel, and to shoot
in Cross-Bows, and Hand-Guns.

Rex, &c. Sciatis qd' nos de gratia nostra speciali ac ex certa scientia & mero motu concessimus & licentiam dedimus W. B. Armiger' qd' ipse durante vita sua naturali ad libitum & voluntatem suam uti exercere & gauder' quibuscunque vest' apparat' & catben' necnon sagittare in quibusdam arcubus, vocat' Cross-Bows, ac in bombard', vocat' Hand-Guns, & ac custodire tam in domibus & aliter sicut aliquis ligeius nostr' terras & tenementa habens ad annem valorem centum librar' ad terminum vite exercere sagittare custodire & gaudere licite & impun' valent' & possit absque aliqua forisfact' pœna sive depardito & absque perturbatione molestation' inquietatione impedimento seu gravamine quocunque: Aliquibus statutis provisionibus sive restriction' inde fact' edit' ordinat' sive provis' non obstantibus. In cuius rei Testimonium has literas nostras fieri fecimus patentes. Teste meipso apud Westm', &c.

A Licence to make a Park within the
Liberty of a Forest.

Regina omnibus ad quas, &c. salutem.
Sciatis qd' nos de gratia n'rum speciali ac
ex certa scientia, &c. concessimus & li-
centiam dedimus ac per presentes pro
nobis hæred' & successoribus n'ris con-
cedimus & licentiam damus dilecto nostro
J. D. de D. in Com', &c. Annigero qd'
ipse hæred' & assignat' sui imperpetuum
habeant liberam warrenam & libertatem
parci ac omnia quæ ad liberam warrenam
& libertatem parci spectant' & pertinent'
in omnibus dominicis terr' suis manerii
sui de D. in dict' Com' C. ac in omni-
bus terris pratis pastur' & hæreditament'
suis cognit' per nomen vel per nomina
de, &c. licet terræ ille sint infra metas
alicujus forestæ seu obaceæ nostr'. Ita
qd' nullus custos ballivus nec aliquis alius
officiar' nostror' hæred' vel successor' no-
stro forest' nostr' de, &c. in dict' Com'
C. nec eorum deputat' vel deputati ser-
viens aut serviens vel aliquis alius seu
aliqui alii intrent' terras illas ad aliquid
fugand' vel capiend' qd' ad warrenam
& parcam pertinent' sine licentia & vo-
luntate ipsius J. hæred' & assignat' suorum

sub

sub forisfactura nobis 10 l. Quare volumus & pro nobis hæredibus & successoribus n'ris firmit' præcipimus qd' præd' J. hæred' & assignat' sui imperpetuum habeant liberam warrenam & libertatem parci in omnibus præd' dominos terr' prat' pascuis pasturis & hæreditamentis suis in D præd' ac in cæteris præmissis licet terræ ille sint infra metas alicujus forest' seu chaseæ nostr' : Ita qd' nullus custos ballivus nec aliquis alius officiar' nostr' hæred' vel successor' nostr' forest' de, &c. præd' in dic' Com' C. nec eorum deputat' vel deputati serviens aut servi-entes nec aliquis alius vel aliqui alii intrent' terras præd' aut aliquam inde parcel' ad fugand' vel capiend' Damas Lepores cuniculos phasianos perdices aut aliquod aliud quod ad warrenam & parcum pertineat' sine licentia & voluntate ipsius J. hæred' assignat' suorum super forisfactura decem librarum. Ac ulterius de uberiori gratia nostra damus & pro nobis & successoribus nostros concedimus præfat' J. & hæredibus & assignat' suis qd' ipse hæred' & assignat' sue imperpetuum sint immunes & liberi & qd' omnia & singula præmissa sunt & erunt immuna & libera ab omni Jurisdictione præscription' controllament' & consuetudin'

din' libertat' privilegio ingressu venation' fugation', &c.

Of Licences to Hunt or Hawk in the King's Forests, Chases, Parks, or Warrens.

The King may grant this to any of his Subjects; so may those who have any special Authority from his Majesty in that Behalf under the Great Seal of *England*, grant such Licences: As the Lord Chief Justice in Eyre of the King's Forests may give a Warrant, or grant a Licence, to any Nobleman or Gentleman that hath a Manor or Freehold therein; for the first, to hawk or hunt in his Manor or Lordship, and the other in his Freehold.

A Subject that is Lord of a Forest, may grant Licence to whom he pleaseth to hunt and hawk in his Forests; but no Person can license or give Warrant to any to hunt and hawk in the King's Forest, except such as aforesaid.

No Forester, or any such Officer, may hawk or take any Fowls of Warren, as Pheasants and Partridges within

within his Walk in the Forest, nor give Licence to any other so to do.

If any Person hath Right or Interest to a Fee-Deer, whether it be by *Fee-Deer* Prescription as belonging to an Office, or otherwise, he ought to give Notice to the Forester, and require him to execute his Warrant; if the Forester refuse, the Person with his Servants may enter, and justifie the taking of such Deer.

There is also a Licence in Law,
 cence in Fact, or Deed.

By Law, or by Word of Mouth, or by Prescription, as belonging to some Office in the Forest, and a Licence in Writing. A Licence in Law by Word only, without Writing, is valid between one Subject and another, as from an Owner of a Forest, Chase, or Park.

A Licence to impark, or inclose a Park, must contain a certain Quantity of Ground; and it must be the proper Soil of the Grantee, or else the Park to be seised.

A Subject being Owner and Lord of a Forest gave a Licence to another to make and inclose a Park within the Metes of the same Forest, to have and to hold the same Park inclosed, with all such Venison as the Grantee shall put therein, to him, and his Heirs for ever. And this was admitted for a good Licence in a Claim made in Eyre. *Aff. de Pickering, fo. 64:*

S E C T. XVIII.

W A R R A N T S.

A Warrant to search for Nets against one not qualified to keep them.

To the Constable of, &c.

Suff. ff. ‘ **W** Hereas Complaint hath
 ‘ been made to me,
 ‘ that the Fish in, &c. have lately been
 ‘ destroyed by some disorderly Per-
 ‘ sons not qualified by Law, either as
 ‘ having a free Fishery, or as Owners
 ‘ there.

thereof, or otherwise lawfully authorized to fish in Navigable Rivers; and that several Nets, Leaps, Piches, and other Instruments and Engines, are kept in the Parish of, &c. for the Destruction of Fish, by Persons who are not Makers or Sellers thereof, contrary to the Statute in that Case made and provided. These are therefore to require you forthwith to enter into the Houses, Out-houses, and other suspected Places of Persons within your Parish, or of such who you are credibly informed have any Nets, or other Instruments, for Destruction of Fish, and to seize the same where you shall find any such, and likewise to bring the Person, in whose House they shall be found, before me, or some other Justice of the Peace of this County, to answer the Premisses. And hereof fail not, &c.

In the Case of the King against Birt and Ryde, *Trin. 21 Car. 2.* on Information for a Riot, it appeared, That the Defendant came by Colour of a

Warrant from the Master of the Game to search for Nets, Guns, &c. The Parties submitted to a Fine: And *per Cur'*, by such Warrant no House can be broken open, 2 *Keb.* 530.

A Warrant to a Game-keeper, or any other Person to search for Dogs. Vide Tit. Dogs.

A Warrant to search for Hare, Partridge, &c. directed to the Constable.

Suff. ff. 'Whereas Complaint hath
' been made to me, that the Game
' in, &c. hath been lately destroyed
' by idle and disorderly Persons of the
' Parish of, &c. These are therefore
' to require you forthwith to enter
' into, and search the Houses, Out-
' houses, and other Places within your
' Parish, of all and every Person and
' Persons whom you shall justly sus-
' pect or be informed to have any
' Hare, Partridge, Pheasant, Fish,
' Pigeon, Fowl, or other Game;
' and where you find any such, to
' apprehend the said Person suspected
' to have unlawfully come by the same,
' and

‘ and to bring him before me, or
 ‘ some other Justice of the Peace for
 ‘ this County, to answer the Premis-
 ‘ ses. And hereof fail not, &c.

*A Warrant to levy any Sum not under
 5 s. or above 20 s. for every Hare,
 Partridge, Pheasant, Pigeon, Fish,
 Fowl, or other Game, found upon
 Search as aforesaid.*

To the Constable of, &c.

Suff. ss. ‘ Whereas *T. B.* of, &c. hath
 ‘ this present Day been lawfully con-
 ‘ victed before me, for that he did
 ‘ not give a good Account how he
 ‘ came by a Brace of Hares which
 ‘ were found in his House in the Pa-
 ‘ rish of *A.* upon Search made for
 ‘ that Purpose; and not being able
 ‘ to produce the Party of whom he
 ‘ bought the same, or some credible
 ‘ Witness to make Oath of the Sale
 ‘ thereof to him, pursuant to the Sta-
 ‘ tute in that Case made and provided:
 ‘ These are therefore to require you
 ‘ forthwith to levy the Sum of 20 s. by
 ‘ Distress and Sale of the Goods of the

' said *T. B.* which said Sum is by me
 ' ascertained for his said Offence, as
 ' forfeited for the same ; and that you
 ' pay one Moiety to the Church-war-
 ' dens or Overseers of the Poor of
 ' the said Parish, for the Use of their
 ' Poor ; and for want of such Di-
 ' stress, that then you certifie me
 ' thereof, that such farther Order may
 ' be taken therein as the Law di-
 ' rects. And hereof not, &c.

Commitment for Want of a Di- stress.

*To the Constable of, &c. and to the
 Keeper of the House of Correction
 at L. &c.*

Suff. ff. ' Whereas you the said Con-
 ' stable, &c. were lately by my War-
 ' rant required to levy 20 s. on the
 ' Goods and Chattels of *T. B.* of, &c.
 ' by Distress and Sale thereof, which
 ' said Sum was by him forfeited, for
 ' that he did not give a good Account
 ' how he came by a Brace of Hares
 ' found upon Search in his House in
 ' the Parish of, &c. and not being
 ' able

able to produce the Party of whom
he bought the same, or some credible
Witness to make Oath of the
Sale thereof unto him. And where-
as you have informed me, that the
said *T. B.* hath not sufficient where-
on to distrain for the said Forfeiture:
These are therefore to require you
forthwith to apprehend the said *T. B.*
and to convey him to the House of
Correction in *L. &c.* and to deli-
ver him to the Keeper thereof, toge-
ther with this Warrant, command-
ing you the said Keeper to take the
aforesaid *T. B.* into your Custody,
and cause him to be whipped, and
kept to hard Labour for the Space
of Three Weeks next ensuing the
Date hereof. Given under my Hand
and Seal, &c.

The like Proceeding upon the same
Statute of 4 & 5 *W. & M. c. 5, 23.*
may be had against the Offenders
following; (*viz.*) Those who are not
qualified, and who keep Bows, Coney-
Dogs, Ferrets, Greyhounds, Hare-
pipes, Hays, Lowbells, Lurchers, Nets,
Setting-Dogs, Snares, Tunnels, or
any

any other Instruments for destroying Fish, Fowl, or any other Game.

They may be convicted before one Justice for not giving a good Account how they came by the same, or producing the Party of whom they bought them.

What Persons are qualified to keep Dogs, Nets, &c.

He must be Owner of a Free Warren. Or Lord of a Manor.

Or he must have Estate of Inheritance of 100*l.* per Annum, either in his own Right, or in the Right of his Wife, or for Life.

Or he must have a Lease for Ninety nine Years of 150*l.* per Annum.

Or he must be the Son and Heir of an Esquire, or higher Dignity.

A Warrant against one not qualified to keep Coney-Dogs, Greyhounds, &c.

To the Constable, &c.

Suff. ff. ' Whereas I am credibly
' informed, That T. B; of, &c. doth
' keep and use Greyhound, &c. (as
' the

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' the Case is) to destroy the Game,
' and that he is not qualified by the
' Law of this Realm to keep or
' use the same: These are therefore
' to require you forthwith to appre-
' hend the said T. B. and to bring him
' before me, or any other Justice of
' Peace for this County, to answer the
' Premisses, and further to be pro-
' ceeded against according to Law.

S E C T. XIX.

Vide Game-Law, Part I.
Sect. 18, &c.

Game-keepers.

JUSTIFICATION in Trespass for entering
and seizing a Dog or Gun, &c. by
Vertue of a Warrant under the Hand
of a Justice of Peace, the general
Issue may be pleaded. But *Quære*, If
one meerly as Game-keeper seize, if
he ought not to plead specially? *Vide*
sub Tit. Guns.

Per

Per Stat. 5 Annæ, A Lord of a Manor (under his Hand Seal) may give Power to a Game-keeper to kill Game within his Lordship: But such Game-keeper must not sell any Game without the Consent of the Lord. If he doth, then upon Complaint of the said Lord, and upon the Oath of one Witness before a Justice of Peace, he shall be sent to the House of Correction for Three Months. *Vide Game-Law, Part I. Sect. 90.*

Licence from the Lord of a Manor to a Game-keeper.

Suff. ss. ' I A. B. Lord of the Ma-
' nor of, &c. in the said County, do
' hereby give Licence, Power, and
' Authority to R. H. of, &c. to kill any
' Hare, Pheasant, Partridge, or any
' other Game in or upon my Lands,
' Manor of, &c. aforesaid. *Vide*
' more fully in the *First Part*.



A Mittimus of the Game-keeper to the House of Correction for disposing of the Game.

To the Constable of, &c. and to A. B. Keeper of the House of Correction.

Suff. ss. ' Whereas R. K. of, &c.
' being impowered under the Hand
' and Seal of R. B. Esq; Lord of the
' Manor of C. in the said County; to
' kill Game in his said Manor to his
' Use, did on the 3d Day of *August* last
' past kill one Hare in the said Ma-
' nor, and did on the next Day after
' sell the same to T. P. of, &c. without
' the Consent or Knowledge of the
' said R. B. And whereas the said
' R. K. hath on the Day of the Date
' hereof, and upon Complaint of the
' said R. B. been duly convicted be-
' fore me of the said Offence by the
' Oath of J. B. of, &c. These are
' therefore to require you to convey
' the said R. K. to the House of Cor-
' rection at L. and to deliver him to
' the Keeper thereof, who is hereby
' required to receive him into his Cu-
' stody,

‘ stody, and safely to keep him in the
 ‘ House of Correction for the Space
 ‘ of Three Months next ensuing. And
 ‘ hereof fail not. *Given under my*
 ‘ Hand and Seal, &c.

From the 1st of May, 1711. No
 Lord of a Manor may appoint several
 Game-keepers in the same Manor,
 nor shall make above one Game-keeper,
 and shall enter the Name of such
 Game-keeper. *Vide Game-Law, Part I.*
Sect. 90.

Game-keeper not to kill or sell,
Vide Game-Law, Part I. Sect. 91.

Of Power of a Game-keeper searching for
 Guns: *Vide Game-Law, Part I.*
Sect. 18. Per Stat. 22 & 23 Car. 2.
c. 25.

Licence or Grant of a Game-keeper: *Vide*
Game-Law, Part I. Fol. 61.



F I N I S.

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